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9–5–00 Tuesday
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 13, 2000, at 9:00 a.m.

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

RESERVATIONS: 202–523–4538

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Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 65, No. 172
Tuesday, September 5, 2000

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC51

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of WIC Mandates of Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to implement the nondiscretionary WIC provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, enacted on August 22, 1996. The provisions in this interim rule include elimination of the following provisions: required provision of written information on certain other assistance programs; State agency timeframes for action on local agency applications for participation in the WIC Program; annual evaluation of nutrition education and breastfeeding promotion efforts; and annual submission of a State Plan.

In addition, this rule implements the option which allows State agencies to limit WIC services to citizens and qualified aliens. This rulemaking is intended to simplify the State Plan submission and approval process by eliminating unnecessary duplication, and to increase State agency flexibility in the administration and operation of the WIC Program.

DATES: This rulemaking becomes effective October 5, 2000. To be assured of consideration, written comments on this rule must be postmarked by November 6, 2000.

ADDRESSES: Comments may be mailed to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2746. All written comments will be available for public inspection at this address during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford at (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Background

Section 729 of Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, enacted on August 22, 1996, amended a wide range of WIC Program provisions in such areas as program outreach; referral and access; coordination; nutrition education and breastfeeding promotion and support. Congress eliminated many WIC provisions to decrease the burden on State agencies and to give State agencies more flexibility in administering the program. WIC requirements that were eliminated include the annual evaluation of nutrition education and breastfeeding promotion and support efforts; provision of written information on Child Support, Temporary Assistance for Needy Families (TANF) (formerly known as AFDC), and the Food Stamp Program; the nutrition education "master file" documentation method; and timeframes for State agency action on local agency applications for participation in the program. In addition, several State Plan requirements were modified or eliminated. All of these provisions are mandatory, and have been incorporated into this interim rule exactly as they appear in the law itself. As such, they are considered to be nondiscretionary provisions, and cannot be modified based on any comments that may be submitted regarding them.

Section 742 of Public Law 104–193 also grants State agencies the option to prohibit service to persons other than citizens and qualified aliens. Comments are welcome regarding the Department's treatment of this provision, found at 7 CFR part 246.7(c)(2), and its anticipated effect(s) upon the administration of the WIC Program.

The following is a discussion of each provision addressed in section 729 of Public Law 104–193 that is incorporated in this interim rule. The provision of Public Law 104–193 requiring the Secretary to establish criteria for the disqualification of WIC vendors who have been disqualified from the Food Stamp Program has been addressed in a separate rulemaking published on March 18, 1999, at 64 FR 13311.

1. Definition of Homeless Individual—§ 246.2

The previous definition of "homeless individual" included an individual whose primary nighttime residence is a temporary accommodation in the residence of another individual. Section 729(a)(1) of Public Law 104–193 amended section 17(b)(15)(B)(iii) of the Child Nutrition Act of 1966 (CNA) by revising the definition of homeless individual to state that a temporary accommodation in the residence of another individual cannot exceed 365 days. The definition of homeless individual in § 246.2 has been revised to reflect this change.

2. State Plan—§ § 246.4(a), 246.4(a)(14)(ix), 246.4(a)(18), 246.4(a)(19), and 246.4(a)(21)

Previous WIC regulations required that by August 15 of each year, each State agency would submit to the Food and Nutrition Service (FNS) for approval a State plan for the following year as a prerequisite to receiving funds. Section 729(e)(1)(A)(i) of Public Law 104–193 amended section 17(f)(1)(A) of the CNA by modifying the State plan submission requirement. The State agency is now only required to submit an initial plan of operation and administration. Once approved, the State agency is only required to submit for approval substantive changes in the plan, as defined in WIC Policy Memorandum 97–4, issued by FNS July 16, 1997. Section 246.4(a) has been amended to reflect this change.

In addition to the annual submission change, there were several State plan requirements that were eliminated or modified. State agencies should keep in mind that while the required content of the State Plan has been reduced, the actual activities and operations that were previously described in the State Plan are still required or, if they are

conducted at the State agency's option, permitted. The only change is that FNS no longer requires a detailed explanation of these activities, as discussed below, as a condition of the State Plan's final approval.

Section 729(e)(1)(B)(iv) of Public Law 104–193 deleted, among other provisions, section 17(f)(1)(C)(xii), thus eliminating the State plan requirement for an estimate of increased participation when funds conversion authority is requested by the State agency. As such, § 246.4(a)(14)(ix) has been revised to eliminate the participation estimate.

Also, section 729(e)(1)(B)(iii) of Public Law 104–193 amended section 17(f)(1)(C)(vii) of the CNA by removing the requirement for a plan to provide program benefits to eligible individuals most in need of the benefits and to provide eligible individuals not participating in the program with information on the program, the eligibility criteria for the program, and how to apply for the program. Section 246.4(a)(18) has been amended to reflect this legislative change. Please note, however, that the statutory requirement that the State plan include a plan for reaching and enrolling women in the early months of pregnancy, including provisions to reach and enroll eligible migrant farmworkers, Indians and homeless individuals, is retained both in the CNA and in program regulations.

The requirement to include a plan addressing how incarcerated persons or juveniles in detention facilities will be provided WIC benefits was also eliminated. The Department would like to clarify that under the CNA, State agencies may continue to serve these individuals. Congress merely eliminated the requirement that State agencies include in their State plans their procedures for addressing the special needs of these individuals.

In addition, section 729(e)(1)(B)(iv) of Public Law 104–193 deleted, among other provisions, section 17(f)(1)(C)(x) of the CNA, thus eliminating the requirement that a State agency use statutorily specified techniques in its plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas. The statutory requirements for specific use of appointment scheduling, adjustment of clinic hours, clinic locations, and mailing of multiple vouchers were deleted. At the same time, an amendment was made to section 17(f)(1)(C)(vi) of the CNA to add a requirement for a plan to provide benefits to unserved and underserved areas in the State, including a plan to improve access to the program for those participants and prospective applicants who are employed, or who reside in rural areas if sufficient funds are available to serve additional persons. The net result of these two amendments is that Congress eliminated only the specific methods or procedures to be used to address the special needs of employed participants as well as applicants and individuals who reside in rural areas. While the Department of Agriculture (Department) still encourages the scheduling of appointments and adjustment of clinic hours and locations, State agencies now determine the specific practices they will use to accommodate working and rural applicants and participants. Section 246.4(a)(21) is amended to reflect these changes.

3. Selection of Local Agencies—§ 246.5(b)

Prior to the enactment of Public Law 104–193, § 246.5(b) required that the State agency act on local agency applications for participation in the program within specific timeframes. Upon the receipt of a completed application from a local agency for participation in the program, State agencies were required to notify the applicant agency in writing within 30 days of the approval or disapproval of its application. When an application was disapproved, the State agency was required to advise the applicant agency of the reasons for such disapproval. In addition, within 15 days after the receipt of an incomplete application the State agency was required to notify the applicant agency of additional information needed to complete the application. Section 729(e)(2) of Public Law 104–193 deleted, among other provisions, section 17(f)(6) of the CNA, thus eliminating all timeframes for State agency action on local agency applications to participate in the program. State agencies now determine the timeframes for such action. Section 246.5(b) has been amended to reflect this change. While timeframes for action are now left to State agency discretion, the Department encourages State agencies to continue to use the 30 and 15-day timeframes.

4. Certification of Participants—§§ 246.7(b)(1), 246.7(b)(4), 246.7(c), 246.7(d)(2)(vi)(1), 246.7(d)(2)(vi)(2), 246.7(h)(1), 246.7(j)(9), and 246.7(p)

Program Referral and Access

Section 729(d)(2) of Public Law 104–193 deleted section 17(e)(4)(A) of the CNA, thus eliminating the requirement that applicants be provided with written information concerning the receipt of food stamps, TANF (formerly known as AFDC), and the child support enforcement program under part D of title IV of the Social Security Act, on at least one occasion, by each adult participant in and each applicant for the WIC Program. In addition, section 729(d)(2) also added new statutory authority allowing State agencies to provide local agencies with materials describing other programs for which a participant may be eligible. Section 246.7(b) has been amended to reflect these changes.

Section 729(e)(9) of Public Law 104–193 amended redesignated section 17(f)(18) (formerly section 17(f)(19)) of the CNA by making optional the requirement for a local agency to provide information about other potential sources of food assistance in the local area to individuals who apply in person to participate in the WIC Program, but who cannot be served because the WIC Program is operating at capacity in the local area. Section 246.7(b)(3) has been amended to reflect this change.

State Option To Limit WIC Participation to United States Citizens, Nationals, and Qualified Aliens

Section 742 of Public Law 104–193 specifies that States are neither required nor prohibited from providing program benefits to individuals who are not United States (U.S.) citizens, nationals, or qualified aliens. The use of the term "State" in the legislation conveys this authority to WIC State agencies and to Indian Tribal Organizations (ITOs) operating as WIC State agencies. Section 431(b) of Public Law 104–193 defines "qualified alien." Qualified aliens include: (1) Lawful permanent residents; (2) asylees; (3) refugees; (4) parolees admitted for at least one year; (5) certain aliens whose deportations are being withheld; (6) certain conditional entrants; (7) certain Cuban and Haitian entrants; and (8) certain battered aliens, alien parents of battered children, and alien children whose parents are battered. Therefore, under Public Law 104–193, States and WIC State agencies have the option to limit WIC participation to U.S. citizens, nationals, and qualified aliens. Section 246.7(c)(2) has been added to reflect this option.

Because a State agency's decision to implement this option will effectively reduce the State agency's eligible WIC population, FNS, by regulatory authority, will make a downward adjustment of that State agency's estimated WIC-eligible population to reflect the number of aliens the State agency declares no longer eligible. If a

State agency's participation decreases and food funds are not expended, for whatever reason, including the exclusion of certain categories of aliens, FNS may execute its regulatory authority to recover funds during the year from the State agency in question. FNS apprised State agencies on January 13, 1997, of these potential consequences of implementing the option to limit participation to U.S. citizens, nationals, and qualified aliens.

States/WIC State agencies choosing to implement the option have flexibility in the development of specific policies and procedures for implementation. States/WIC State agencies assume full liability for implementation of this option and are responsible for ensuring their procedures are not discriminatory or capriciously applied. Given the wide latitude under which State agencies may implement this option, State agencies are strongly encouraged to consult with their legal counsel regarding the development and implementation of procedures.

Section 432 of Public Law 104–193 requires the U.S. Attorney General to issue regulations requiring verification of eligibility for certain Federal public benefits.

Further, section 504 of the Illegal Immigration Reform and Immigrant Responsibility Act, Public Law 104–208, requires the U.S. Attorney General to establish procedures whereby persons applying for certain Federal public benefits would provide proof of citizenship. States or WIC State agencies that choose to implement the option to limit WIC participation to U.S. citizens, nationals, and qualified aliens are encouraged to review the guidance and regulations issued by the U.S. Attorney General when developing their specific policies and procedures to implement the option. The guidance (Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) was published at 62 FR 61344, Nov. 17, 1997. The proposed rule (Verification of Eligibility for Public Benefits) was published at 63 FR 41662, August 4, 1998. The final regulation on verifying alien eligibility for public benefits is forthcoming. However, States and State agencies who do elect to limit WIC participation to U.S. citizens, nationals, and qualified aliens are not required to implement the guidance and regulations issued by the Attorney General on these matters, even after the final rule has been published.

If a State/State agency, including an ITO serving as a WIC State agency, chooses to implement this option, it must inform FNS of its intentions and provide written copies of the procedures it will establish. This documentation and notification are for informational purposes only. Neither the State agency's decision nor its procedures will be subject to FNS approval. To date, no State has chosen to implement this option.

Certification of Qualified Aliens

Three provisions in Public Law 104–193 address the certification of aliens but do not apply to WIC. This portion of the preamble is provided to clarify those provisions and their inapplicability to WIC. First, the law specifies in section 421 that in determining the eligibility and benefits of an alien for any Federal means-tested public benefit programs as provided in section 403 of the law, the income and resources of an alien shall include the income and resources of the person who sponsors the alien, *i.e.*, signs an affidavit of support, including the income of the sponsor's spouse. This provision, however, does not apply to the WIC Program. The WIC Program is specifically exempted from the application of the term "Federal means-tested public benefit" under section 403. In addition, FNS published a Notice in the **Federal Register** on July 7, 1998 at 63 FR 36653 which clarifies that the WIC Program is not a Federal means-tested public benefit program as that term is used in Public Law 104–193 and is exempt from the application of the term.

Second, section 551 of Public Law 104–208, codified at 8 U.S.C. 1183a (which replaced sections 423(a) through 423(c) of Public Law 104–193), provides that if a sponsored alien receives any means-tested public benefit, the appropriate official at the Federal, State, or local level shall request reimbursement by the sponsor in the amount of the assistance. However, section 423(d)(4) of Public Law 104–193, codified at 8 U.S.C. 1183a note, exempts benefits under the CNA, including the WIC Program, from the reimbursement requirement.

Third, section 403(a) of Public Law 104–193 imposes a five-year waiting period after a qualified alien enters the country before he or she is eligible for any Federal means-tested public benefit. Section 403(c), however, exempts benefits under the CNA, including the WIC Program, from this requirement. Therefore, qualified aliens are eligible for the WIC Program without regard to the length of time in the qualifying immigration status.

Section 246.7(q) has been added to clarify in regulations the requirements associated with the certification of qualified aliens.

Adjunct or Automatic Income Eligibility

Section 109(h) of Public Law 104–193 amended section 17(d)(2)(A)(ii)(II), and section 729(d)(2) deleted preexisting section 17(e)(4)(A) of the CNA to conform the CNA's adjunct or automatic income eligibility provisions with the redesignation of the Aid to Families with Dependent Children program as the Temporary Assistance for Needy Families program. Sections 246.7(d)(2)(vi)(1), 246.7(d)(2)(vi)(2), and 246.7(h)(1) are amended to reflect this name change.

Notification of Participant Rights and Responsibilities—§ 246.7(j)(9)

Section 729(e)(4) of Public Law 104–193 amended preexisting section 17(f)(9)(B) (redesignated as section 17(f)(8)(B)) by eliminating the requirement to include specific information on the categories of participants whose benefits are being suspended or terminated because of funding shortages in the notice provided to affected participants. State agencies must still provide notice to participants whose benefits are suspended or terminated because of funding shortages before taking action to suspend or terminate benefits. However, such notice no longer must include the categories of persons whose benefits are being suspended or terminated. Section 246.7(j)(9) has been amended to reflect this change.

5. Nutrition Education—§ 246.11(c)(5) and § 246.11(e)(4)

State Agency Responsibilities

Section 729(d)(1) of Public Law 104–193 amended section 17(e)(2) of the CNA by eliminating the requirement that State agencies annually evaluate nutrition education and breastfeeding promotion and support activities. However, because State agencies must still spend a targeted amount of Nutrition Services and Administration funds on nutrition education and breastfeeding promotion and support activities, this is considered an important function. As such, State agencies are strongly encouraged to maintain a system to evaluate the effectiveness of their activities in these areas. Section 246.11(c)(5) has been deleted to reflect the elimination of the annual evaluation requirement.

Participant Contacts—§ 246.11(e)(4)

Section 729(d)(4) of Public Law 104–193 deleted preexisting section 17(e)(6) of the CNA, thus eliminating the requirement that local agencies use master files to document and monitor the provision of nutrition education. The Department wishes to point out that even though this provision was eliminated legislatively, local agencies may continue using a "master file" to document nutrition education contacts, rather than documenting them in individual participant case files. Recognizing that master file documentation was intended to minimize administrative burden at the local level, State agencies may continue to permit local agencies to use a "master file" to document second or any subsequent nutrition education contacts during a certification period that are provided to a participant, so long as the system also allows a local agency to retrieve the information by participant, so as to review the nutrition education provided to an individual.

6. Distribution of Funds—§§ 246.16(a)(6), 246.16(j)

Section 729(f)(1) of Public Law 104–193 amended section 17(g)(5) of the CNA by making a technical change to replace biennial participation report with reports on program participant characteristics. Section 246.16(a)(6) has been revised to reflect this technical change.

Section 729(g)(1)(B) further amended section 17(h)(8)(G) of the CNA by changing from "shall" to "may" the authority for FNS to promote the joint purchase of infant formula and other foods. The Department has always encouraged this practice as a cost containment measure and will, for the foreseeable future, continue to do so.

7. Records and Reports—§ 246.25(b)(3)

Program Participant Characteristic Reports

Prior to the enactment of Public Law 104–193, section 17(h)(4)(E) of the CNA required that each State agency collect data regarding the incidence and duration of breastfeeding for inclusion in a Department-compiled biennial report to Congress on participant characteristics. Section 729(g)(1)(A) of Public Law 104–193 amended section 17(h)(4)(E) of the CNA by making a technical correction to reflect the elimination of the biennial report to Congress that was to include data on the incidence and duration of breastfeeding. Although the Department is no longer required to send a biennial report to Congress, State agencies must continue to collect the data for inclusion in the report on program participant characteristics that will replace the biennial report. This new report will continue to require the collection of data on breastfeeding incidence and duration. Section 246.25(b)(3) has been revised to reflect this technical change.

Executive Order 12866

This interim rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule provides WIC State and local agencies with increased flexibility in providing program benefits to participants. Several program administration requirements have been reduced or eliminated by this rule.

Paperwork Reduction Act

This interim rule imposes no new reporting or recordkeeping requirements that are subject to OMB review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20).

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557. For reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12998, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of this interim rule. Prior to any judicial challenge to the application of provisions of this rule, all applicable administrative procedures must be exhausted.

Executive Order 13132

FNS has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. As such, FNS has determined that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

Public Law 104–4

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, the FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the 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 of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Good Cause Determination

As discussed above, Section 729 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 contained provisions affecting a wide range of WIC Program provisions, with the stated intention of decreasing the burden on State agencies and giving State agencies more flexibility in administering the program. These provisions of law are mandatory. Therefore, Under Secretary Shirley R. Watkins has determined in accordance with 5 U.S.C. 553(b) that prior notice and comment would be unnecessary, and that good cause exists for making this rule effective without first publishing a proposed rule.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Food and Nutrition Service, Food donations, Grant programs—health, Grant programs—social

programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2, the definition of "Homeless individual" is revised to read as follows:

§ 246.2 Definitions.

* * * * *

Homeless individual means a woman, infant or child:

(a) Who lacks a fixed and regular nighttime residence; or

(b) Whose primary nighttime residence is:

(1) A supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodation;

(2) An institution that provides a temporary residence for individuals intended to be institutionalized;

(3) A temporary accommodation of not more than 365 days in the residence of another individual; or

(4) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

* * * * *

3. In § 246.4:

a. The ninth and tenth sentences of paragraph (a) introductory text are removed;

b. A new ninth sentence is added to paragraph (a) introductory text;

c. The last clause of paragraph (a) introductory text is revised; and

d. Paragraphs (a)(14)(ix), (a)(18) and (a)(21) are revised.

The revisions read as follows:

§ 246.4 State plan.

(a) *Requirements.* * * * After receiving approval of the State Plan, each State agency shall only submit to FNS for approval substantive changes in the State Plan. A complete and approved Plan shall include:

* * * * *

(14) * * *

(ix) For State agencies applying for authority to convert food funds to nutrition services and administration funds under § 246.16(g), a full description of their proposed cost-cutting system or system modification;

* * * * *

(18) The State agency's plan to reach and enroll migrants, and eligible women in the early months of pregnancy.

* * * * *

(21) A plan to improve access to the Program for participants and prospective applicants who are employed or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances participants and applicants must travel. The State agency shall also describe any plans for issuance of food instruments to employed or rural participants, or to any other segment of the participant population, through means other than direct participant pick-up, pursuant to § 246.12(r)(8). Such description shall also include measures to ensure the integrity of Program services and fiscal accountability.

* * * * *

4. In § 246.5, paragraph (b) is revised to read as follows:

§ 246.5 Selection of local agencies.

* * * * *

(b) *Application of local agencies.* The State agency shall require each agency, including subdivisions of the State agency, which desires approval as a local agency, to submit a written local agency application. After the receipt of an incomplete application, the State agency shall provide written notification to the applicant agency of the additional information needed. After the receipt of a complete application, the State agency shall notify the applicant agency in writing of the approval or disapproval of its application. When an application is disapproved, the State agency shall advise the applicant agency of the reasons for disapproval and of the right to appeal as set forth in § 246.18. When an agency submits an application and there are no funds to serve the area, the applicant agency shall be notified that there are currently no funds available for Program initiation or expansion. The applicant agency shall be notified by the State agency when funds become available.

* * * * *

5. In § 246.7:

a. Paragraph (b)(1) is removed, and paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) are redesignated as paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5), respectively;

b. Newly redesignated paragraph (b)(3) is revised;

c. Paragraphs (c)(1), (c)(2), and (c)(3) are redesignated as (c)(1)(i), (c)(1)(ii), (c)(1)(iii), respectively;

d. The introductory text of paragraph (c) is redesignated as paragraph (c)(1);

e. A new paragraph (c)(2) is added;

f. Paragraph (d)(2)(vi)(A)(*1*) is amended by removing the words "Aid to Families with Dependent Children (AFDC)" and adding in their place the words "Temporary Assistance for Need Families (TANF)";

g. Paragraph (d)(2)(vi)(A)(*2*) is amended by removing the word "AFDC" and adding in its place the word "TANF";

h. Paragraph (h)(1) is amended by removing the word "AFDC" wherever it appears and adding, in its place, the word "TANF";

i. Paragraph (j)(9) is revised; and

j. A new paragraph (q) is added.

The revisions and additions read as follows:

§ 246.7 Certification of participants.

* * * * *

(b) * * *

(3) Local agencies may provide information about other potential sources of food assistance in the local area to adult individuals applying or reapplying in person for the WIC Program for themselves or on behalf of others, when such applicants cannot be served because the Program is operating at capacity in the local area.

* * * * *

(c) * * *

(2) A State, a State agency, and an Indian Tribal Organization (including, an Indian tribe, band, or group recognized by the Department of the Interior; or an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program) serving as a State agency, may limit WIC participation to United States citizens, nationals, and qualified aliens as these terms are defined in the Immigration and Nationality Laws (8 U.S.C. 1101 *et seq.*). State agencies that implement this option shall inform FNS of their intentions and provide copies of the procedures they will establish regarding the limitation of WIC services to United States citizens, nationals, and qualified aliens.

* * * * *

(j) * * *

(9) If a State agency must suspend or terminate benefits to any participant

during the participant's certification period due to a shortage of funds for the Program, it shall issue a notice to such participant in advance, as stipulated in paragraph (j)(6) of this section.

* * * * *

(q) *Certification of qualified aliens.* In those cases where a person sponsors a qualified alien, (as the term is defined in the Immigration and Nationality Laws (8 U.S.C.1101 *et seq.*)), *i.e.*, signs an affidavit of support, the sponsor's income, including the income of the sponsor's spouse, shall not be counted in determining the income eligibility of the qualified alien except when the alien is a member of the sponsor's family or economic unit. Sponsors of qualified aliens are not required to reimburse the State or local agency or the Federal government for WIC Program benefits provided to sponsored aliens. Further, qualified aliens are eligible for the WIC Program without regard to the length of time in the qualifying status.

§ 246.11 [Amended]

6. In § 246.11:

a. Paragraph (c)(5) is removed; and

b. Paragraphs(c)(6), (c)(7), and(c)(8) are redesignated as paragraphs (c)(5), (c)(6), and (c)(7), respectively.

7. In § 246.16, paragraph (a)(6) is revised to read as follows:

§ 246.16 Distribution of funds.

(a) * * *

(6) Up to one-half of one percent of the sums appropriated for each fiscal year, not to exceed $5,000,000, shall be available to the Secretary for the purpose of evaluating Program performance, evaluating health benefits, providing technical assistance to improve State agency administrative systems, preparing reports on program participant characteristics, and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, rural populations, and to carry out technical assistance and research evaluation projects for the WIC Farmers' Market Nutrition Program.

* * * * *

8. In § 246.25, paragraph (b)(3) is revised to read as follows:

§ 246.25 Records and reports.

* * * * *

(b) * * *

(3) *Program Participant Characteristic reports.* State and local agencies shall provide such information as may be required by FNS to prepare reports on participant characteristics which includes, at a minimum, information on breastfeeding incidence and duration, income and nutritional risk characteristics of participants, and participation in the Program by members of families of migrant farmworkers.

* * * * *

Dated: August 23, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 00–22638 Filed 9–1–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–034–2]

Plum Pox

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that established regulations to quarantine portions of Adams County, PA, due to the detection of plum pox and restrict the interstate movement of articles from the quarantined area that present a risk of transmitting plum pox. We took this action to prevent the spread of plum pox to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on June 2, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on June 2, 2000 (65 FR 35261–35265, Docket No. 00–034–1), we amended the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart, "Plum Pox," composed of new §§ 301.74 through 301.74–4 and referred to below as the regulations. These regulations quarantine portions of Adams County, PA, due to the detection of plum pox and restrict the interstate movement of stone fruit budwood, root stock, and other plant material from the quarantined area that present a risk of transmitting plum pox. We took this action to prevent the spread of plum pox to noninfested areas of the United States.

Comments on the interim rule were required to be received on or before August 1, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 65 FR 35261–35265 on June 2, 2000.

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 29th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–22635 Filed 9–1–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–036–1]

Citrus Canker; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the citrus canker regulations by adding portions of Hendry, Hillsborough, and Palm Beach Counties, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL, due to recent detections of citrus

canker in these areas. This action is necessary on an emergency basis to prevent the spread of citrus canker into noninfested areas of the United States. This action imposes restrictions on the interstate movement of regulated articles from and through the quarantined areas.

DATES: This interim rule was effective August 29, 2000. We invite you to comment on this docket. We will consider all comments that we receive by November 6, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–036–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–036–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which renders the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75–1 through 301.75–14 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide for the designation of survey areas around quarantined areas. Survey areas undergo close monitoring by Animal and Plant Health Inspection Service (APHIS) and State inspectors for citrus canker and serve as buffer zones against the disease.

Under § 301.75–4(c) of the regulations, any State or portion of a State where an infestation is detected will be designated as a quarantined area and will retain that designation until the area has been free from citrus canker for 2 years.

Section 301.75–4, paragraph (d), of the regulations provides that less than an entire State will be designated as a quarantined area only if certain conditions are met. The State must, with certain specified exceptions, enforce restrictions on the intrastate movement of regulated articles from the quarantined area that are at least as stringent as those being enforced on the interstate movement of regulated articles from the quarantined area. The State must also undertake the destruction of all infected plants and trees. Under the regulations in § 301.75–6(c), within 7 days after confirmation that a plant or tree is infected, the State must provide written notice to the owner that the plant or tree must be destroyed. The owner then has 45 days in which to destroy the infected plant or tree. These State-conducted eradication activities within quarantined areas are an integral element of a cooperative State/Federal citrus canker program that, when successfully completed, will result in the eradication of citrus canker and the removal of an area's designation as a quarantined area.

New infestations of citrus canker have been detected on properties in Broward, Collier, Dade, and Manatee Counties, FL, that lie outside the previously quarantined areas, and in areas in Hendry, Hillsborough, and Palm Beach Counties, FL, which previously did not contain any quarantined areas. The State of Florida has placed these new areas under State quarantine and is enforcing restrictions on the intrastate movement of regulated articles from these quarantined areas. We have determined that Florida's restrictions on the intrastate movement of regulated articles from the quarantined areas are at least as stringent as those on the interstate movement of regulated articles from the quarantined areas. Therefore, as provided in § 301.75–4(d), we are designating areas less than the entire State as quarantined areas.

Specifically, we are amending the regulations by adding two areas in Hendry County, FL, one area in Hillsborough County, FL, and a combined area in Broward, Dade, and Palm Beach Counties, FL, to the list of quarantined areas. The combined entry includes the portion of Broward and Dade Counties, FL, that was previously designated as a quarantined area. We are also expanding the previously quarantined areas in Collier and Manatee Counties, FL. An exact description of the quarantined areas can be found in the rule portion of this document.

These new and expanded quarantined areas include a buffer zone around the areas where infection has been detected. The buffer zone extends at least 1 mile from the edge of any premises where citrus canker has been detected, with the exception of that portion of the quarantined area that is adjacent to the Florida Everglades. Along that edge of the quarantine boundary, there is no buffer zone because no host material occurs in the Everglades. In most cases, the buffer zone extends several miles from the edge of any premises where citrus canker has been detected, but the exact distance varies. This is because we drew the boundary lines by using the nearest observable landmarks, such as roads or rivers, or political boundaries, so that the boundary lines can be easily identified.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of citrus canker into noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866

and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the citrus canker regulations by adding portions of Hendry, Hillsborough, and Palm Beach Counties, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL, due to recent detections of citrus canker in these areas. This action is necessary on an emergency basis to prevent the spread of citrus canker into noninfested areas of the United States. This action restricts the interstate movement of regulated articles from and through the quarantined areas.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

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

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The assessment provides a basis for the conclusion that the selected citrus canker eradication program will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

2. In § 301.75–4, paragraph (a) is revised to read as follows:

§ 301.75–4 Quarantined areas.

(a) The following States or portions of States are designated as quarantined areas:

Florida

Broward, Dade, and Palm Beach Counties. That portion of the counties bounded by a line drawn as follows: Beginning at the intersection of the shoreline of the Atlantic Ocean and the Broward/Palm Beach County line; then west along the Broward/Palm Beach County line to the eastern boundary of the Loxahatchee Conservation Area; then south along the eastern boundary of the Loxahatchee Conservation Area to the Sawgrass Expressway; then south along the Sawgrass Expressway to Interstate Highway 75; then north along Interstate Highway 75 to U.S. Highway 27; then south along U.S. Highway 27 to the Florida Turnpike Homestead Extension; then south along the Florida Turnpike Homestead Extension to NW 58th Street; then west along NW 58th Street to Krome Avenue (NW 177th Avenue); then south along Krome Avenue (NW and SW 177th Avenue) to U.S. Highway 41 (Tamiami Trail); then west along U.S. Highway 41 (Tamiami Trail) to sec. 11, 14, 23, 26, 35, and lot 2, T. 54, R. 38; then south along sec. 11, 14, 23, 26, 35, and lot 2, T. 54, R. 38, to sec. 2 and 11, T. 55, R. 38; then south along sec. 2 and 11, T. 55, R. 38, to SW 197th Avenue; then south along SW 197th Avenue to SW 152nd Street; then west along SW 152nd Street to the L–31N Canal; then south and west along the L–31N Canal to the shoreline of the Florida Bay; then east along the shoreline of the Florida Bay to the shoreline of the Atlantic Ocean; then north along the shoreline of the Atlantic Ocean to the point of beginning.

Collier County. That portion of the county bounded by a line drawn as follows: Beginning at the intersection of State Highway 29 and County Road 858; then west along County Road 858 to sec. 13, T. 48 S., R. 29 E.; then north along sec. 13, T. 48 S., R. 29 E., to sec. 25, T. 47 S., R. 29 E.; then east along sec. 25, T. 47 S., R. 29 E., to sec. 30, T. 47 S., R. 30 E.; then north along sec. 30, T. 47 S., R. 30 E., to sec. 19, T. 47 S., R. 30 E.; then east along sec. 19, T. 47 S., R. 30 E., to sec. 20, T. 47 S., R. 30 E.; then south along sec. 20, T. 47 S., R. 30 E., to sec. 29, T. 47 S., R. 30 E.; then east along sec. 29, T. 47 S., R. 30 E., to sec. 28, T. 47 S., R. 30 E.; then south along sec. 28, T. 47 S., R. 30 E., to sec. 33, T. 47 S., R. 30 E.; then east along sec. 33, T. 47 S., R. 30 E., to the Collier/Hendry County line; then south along the Collier/Hendry County line to sec. 25, T. 48 S., R. 30 E.; then west along sec. 25, T. 48 S., R. 30 E., to State Highway 29; then north along State Highway 29 to the point of beginning.

Hendry County. That portion of the county bounded by a line drawn as follows: Beginning at the northwest corner of sec. 7, T. 48 S., R. 33 E.; then east along sec. 7, T. 48 S., R. 33 E., to Government Road; then north along Government Road to State Road 833; then north along State Road 833 to sec. 11, T. 48 S., R. 33 E.; then east along sec. 11, T. 48 S., R. 33 E., to sec. 24, T. 48 S., R. 33 E.; then west along sec. 24, T. 48 S., R. 33 E., to sec. 19, T. 48 S., R. 33 E.; then north along sec. 19, T. 48 S., R. 33 E., to the point of beginning.

That portion of the county bounded by a line drawn as follows: Beginning at the intersection of State Road 835 and

Deer Fence Road; then north along Deer Fence Road to sec. 6; then east along sec. 6 to sec. 2; then south along sec. 2 to sec. 35; then west along sec. 35 to the point of beginning.

Hillsborough County. That portion of the county bounded by a line drawn as follows: Beginning at the northwest corner of sec. 34, T. 31, R. 19; then south along sec. 34, T. 31, R. 19, to 24th Street NE; then south along 24th Street NE to sec. 3 and 10, T. 32, R. 19; then south along sec. 3 and 10, T. 32, R. 19, to 24th Street SE; then south along 24th Street SE to sec. 15, 14, and 13, T. 32, R. 19; then east along sec. 15, 14, and 13, T. 32, R. 19, to sec. 18, T. 32, R. 20; then east along sec. 18, T. 32, R. 20, to Bishop Road; then east along Bishop Road to West Lake Drive; then north along West Lake Drive to sec. 32 and 31, T. 31, R. 20; then west along sec. 32 and 31, T. 31, R. 20, to sec. 36, 35, and 34, T. 31, R. 19; then west along sec. 36, 35, and 34, T. 31, R. 19, to the point of beginning.

Manatee County. That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Interstate Highway 75 and the shoreline of the Manatee River; then west along the shoreline of the Manatee River to the shoreline of the Terra Ceia Bay; then northeast along the shoreline of the Terra Ceia Bay to sec. 25, 24, 13, 12, and 1, T. 33 S., R. 17 E.; then north along sec. 25, 24, 13, 12, and 1, T. 33 S., R. 17 E., to the Manatee/Hillsborough County line; then east along the Manatee/Hillsborough County line to sec. 3 and 10, T. 33 S., R. 18 E.; then south along sec. 3 and 10, T. 33 S., R. 18 E., to Carter Road; then south along Carter Road to sec. 22 and 27, T. 33 S., R. 18 E.; then south along sec. 22 and 27, T. 33 S., R. 18 E., to 69th Street East; then east along 69th Street East to Erie Road; then south along Erie Road to U.S. Highway 301; then southwest along U.S. Highway 301 to Interstate Highway 75; then south along Interstate Highway 75 to the point of beginning.

That portion of the county bounded by a line drawn as follows: Beginning at the northwest corner of sec. 8, 9, 10, 11, and 12, T. 33 S., R. 21 E.; then east along sec. 8, 9, 10, 11, and 12, T. 33 S., R. 21 E., to sec. 12, T. 33 S., R. 21 E.; then south along sec. 12, T. 33 S., R. 21 E., to sec. 18, 19, 30, and 31, T. 33 S., R. 22 E.; then east along sec. 18, 19, 30, and 31, T. 33 S., R. 22 E., to sec. 6, T. 34 S., R. 22 E.; then south along sec. 6, T. 34 S., R. 22 E., to sec. 7, T. 34 S., R. 22 E.; then west along sec. 7, T. 34 S., R. 22 E., to sec. 12, 11, 10, and 9, T. 34 S., R. 21 E.; then south along sec. 12, 11, 10, and 9, T. 34 S., R. 21 E., to sec. 8 and 5, T. 34 S., R. 21 E.; then north along sec. 8 and 5, T. 34 S., R. 21 E., to sec. 31, 29, 20, 17, and 8, T. 33 S., R. 21 E.; then north along sec. 31, 29, 20, 17, and 8, T. 33 S., R. 12 E., to the point of beginning.

* * * * *

Done in Washington, DC, this 29th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–22636 Filed 9–1–00; 8:45 am]

BILLING CODE 3410–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV00–927–1 FRC]

Winter Pears Grown In Oregon and Washington; Establishment of Quality Requirements for the Beurre D'Anjou Variety of Pears; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Agricultural Marketing Service published in the **Federal Register** on August 7, 2000, a final rule which established quality requirements for the Beurre D'Anjou (Anjou) variety of pears under the winter pear marketing order. This document corrects the regulatory text of that rule.

EFFECTIVE DATE: September 6, 2000.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone 202–720–2491.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction revised § 927.105 and added a new § 927.316.

Need for Correction

As published, the regulatory text in paragraph (a) of § 927.316 indicates, in part, that Beurre D'Anjou pears shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that such pears have an average pressure test of 14 pounds. The words "or less" were inadvertently omitted following the words "14 pounds." The words "14 pounds or less" are needed to recognize that pears naturally ripen and soften, over time, and could have an average pressure test less than 14 pounds, which would be acceptable in the marketplace.

Correction of Publication

Accordingly, the publication of the final rule (Docket No. FV00–927–1 FR), which was the subject of FR Doc. 00–19875 is corrected as follows:

1. On page 48139, column two, paragraph (a), line 8 is corrected by inserting the words "or less." after the words "14 pounds".

2. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: August 29, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–22579 Filed 9–1–00; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318 and 381

[Docket No. 97–001C]

RIN 0583–AC35

Elimination of Requirements for Partial Quality Control Programs; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule "Elimination of Requirements for Partial Quality Control Programs" (Docket 97–001F) which was published on May 30, 2000 in the **Federal Register** (65 FR 34381). The final rule removes the remaining requirements pertaining to partial quality control (PQC) programs. A PQC program controls a single product, operation, or part of an operation in a meat or poultry establishment. Removal of these requirements will make the Federal meat and poultry inspection regulations more consistent with FSIS's regulations on pathogen reduction and hazard analysis and critical control point systems and give inspected establishments greater flexibility to adopt new technologies and methods that will improve food safety and other consumer protections.

DATES: Effective August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food

Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 720–5627, fax number (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections amends the meat and poultry products inspection regulations by removing the remaining requirements pertaining to partial quality control (PQC) programs. A PQC program controls a single product, operation, or part of an operation in a meat or poultry establishment, whereas a total quality control (TQC) system controls all products and processes in an establishment. FSIS is removing the design requirements for PQC programs and the requirements for establishments to have PQC programs for certain products or processes. The amended regulations are more consistent with the Agency's Pathogen Reduction (PR)/Hazard Analysis and Critical Control Points (HACCP) regulations, and inspected establishments will have greater flexibility to adopt new technologies and methods that will improve food safety and other consumer protections.

Under the PR/HACCP regulations (at 9 CFR 417.2(b)(3)), thermal processing establishments do not have to have HACCP plans that address food safety hazards associated with microbial contamination if the establishments comply with the canning regulations in 9 CFR 318 subpart G or 9 CFR 381 subpart X. The canning regulations, before amendment by the May 30 final rule, have allowed establishments to handle process deviations or finished product inspections with TQC system provisions or PQC programs or specified procedures for handling deviations during processing or through record review (9 CFR 318.308(d), 318.309(d), 381.308(d), 381.309(d)). The PQC-related requirements pertaining to the control of process deviations and finished product inspections at canning establishments are among the requirements eliminated by the final rule.

Need for Correction

As published, the final rule contained errors in the regulatory text that could prove to be misleading because they are inconsistent with the preamble explanation.

As FSIS noted in the preamble to the final rule eliminating PQC requirements (65 FR 34385), the proposed rule on the subject would have provided options for handling process deviations and finished product inspections to thermal processing establishments that were not yet subject to the PR/HACCP regulations. During the period before the PR/HACCP regulations were implemented in all establishments, FSIS maintained a policy of encouraging the early adoption of HACCP systems by establishments to which the PR/HACCP regulations were not yet applicable (63 FR 4622; January 30, 1998). Thus, the proposed options included HACCP plan provisions addressing food safety hazards associated with microbial contamination, as well as TQC system provisions and alternative documented procedures for handling process deviations. Because the final rule eliminating PQC requirements was published after January 25, 2000, when all FSIS-inspected establishments became subject to the PR/HACCP requirements, it is no longer necessary to provide options specifically for establishments not yet subject to those regulations. The final rule preamble states that deviations in processing are now to be handled according to HACCP plan or alternative procedures, and cites §§ 318.308(d) and 381.308(d).

In the context of the proposed rule, the cited subsections were to provide procedures for handling process deviations where the establishment's HACCP plan does not address food safety hazards associated with microbial contamination hazards, where there is no approved TQC system, or where the establishment has no alternative documented procedures (such as PQC programs) for handling process deviations. The proposed introductory text of these subsections paralleled the proposed introductory text for the subsections on alternative finished product inspection procedures (§§ 318.309(d) and 381.309(d)). The procedures provided by §§ 318.308(d), 318.309(d), 381.308(d), and 381.309(d), and the alternatives delineated in the proposed introductory text of those subsections, were to be available to all thermal processing establishments.

In the preamble to the final rule, FSIS further stated that it was including, as an option for handling process deviations or final product inspections, alternative documented procedures that ensure that only safe and stable products are shipped in commerce (65 FR 34385, col. 3). This option is intended to provide canning establishments with the flexibility to use PQC programs or other procedures for these purposes. However, in the regulatory text of the final rule, FSIS provided such an option for handling final product inspections (§§ 318.309(a), 381.309(a)) but not for handling process deviations (§§ 318.308(b), 381.308(b)). Also, the introductory text of §§ 318.308(d) and 381.308(d), "alternative procedures for handling process deviations," and the introductory text of 318.309(d) and 381.309(d), "alternative procedures for handling finished product inspections," does not state explicitly what the procedures are alternative to.

FSIS is therefore correcting §§ 318.308 (b) and (d), 381.308(b) and (d), 318.309(d), and 381.309(d) to reflect the Agency's intention to provide, for the handling of process deviations and finished product inspections, alternative documented procedures that ensure that thermally processed products will be safe and stable.

Correction of Publication

Accordingly, the publication on May 30, 2000, of the final rule (Docket No. 97–054F), which was the subject of FR Docket 00–12659, is corrected as follows:

§ 318.308 [Corrected]

1. On page 34389, in the second column, § 318.308, paragraphs (b)(1) and (d), introductory text, are revised to read as follows:

* * * * *

(b) * * *

(1)(i) A HACCP plan for canned product that addresses hazards associated with microbial contamination, or,

(ii) Alternative documented procedures that will ensure that only safe and stable product is shipped in commerce; or

(iii) Paragraph (d) of this section.

* * * * *

(d) Procedures for handling process deviations where the HACCP plan for thermally processed/commercially sterile product does not address food safety hazards associated with microbial contamination, where there is no approved total quality control system, or where the establishment has no alternative documented procedures for handling process deviations.

* * * * *

§ 318.309 [Corrected]

2. On page 34389, in the third column, § 318.309, paragraph (d), introductory text, is revised to read as follows:

* * * * *

(d) Procedures for handling finished product inspections where the HACCP plan for thermally processed/commercially sterile product does not address food safety hazards associated with microbial contamination, where there is no approved total quality control system, or where the

establishment has no alternative documented procedures for handling process deviations.

* * * * *

§ 381.308 [Corrected]

3. On pages 34390 and 34391, in the first column, § 381.308, paragraphs (b)(1) and (d), introductory text, are revised to read as follows:

* * * * *

(b) * * *

(1)(i) A HACCP plan for canned product that addresses hazards associated with microbial contamination, or,

(ii) Alternative documented procedures that will ensure that only safe and stable product is shipped in commerce; or

(iii) Paragraph (d) of this section.

* * * * *

(d) Procedures for handling process deviations where the HACCP plan for thermally processed/commercially sterile product does not address food safety hazards associated with microbial contamination, where there is no approved total quality control system, or where the establishment has no alternative documented procedures for handling process deviations.

* * * * *

§ 381.309 [Corrected]

4. On page 34391, in the second column, § 381.309, paragraph (d), introductory text, is revised to read as follows:

* * * * *

(d) Procedures for finished product inspections where the HACCP plan for thermally processed/commercially sterile product does not address food safety hazards associated with microbial contamination, where there is no approved total quality control system, or where the establishment has no alternative documented procedures for handling process deviations.

* * * * *

Dated: August 29, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–22502 Filed 9–1–00; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG15

Clarification and Addition of Flexibility; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on August 21, 2000 (65 FR 50606). This action is necessary to correct an erroneous Accession Number.

FOR FURTHER INFORMATION CONTACT: Anthony DiPalo, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, telephone 301–415–6191, e-mail ajd@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 50606, in the right column, in the third complete paragraph, in the last line, "ML003736106" is corrected to read "ML003701140".

Dated at Rockville, Maryland, this day 29th of August 2000.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–22647 Filed 9–1–00; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Size Standards and the North American Industry Classification System; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: This is a technical correction to the final rule that the Small Business Administration (SBA) published in the **Federal Register** (65 FR 30836–30863) on May 15, 2000. In that rule the Small Business Administration adopted a new table of small business size standards for industries as they are defined in the North American Industry Classification System (NAICS). SBA is providing below a complete replacement table for the one that was contained in that final rule. The table that was published on May 15, 2000, contained errors that occurred during the printing process. The errors are significant in nature and number, and SBA believes that they would be misleading if not corrected. SBA is including, as well, minor editorial changes, although if they were not made, they would not mislead or otherwise affect the correct use of the size standards. This table also includes updated size standards based on two other final rules that SBA subsequently published in the **Federal Register**. Effective October 1, 2000, all users of small business size standards must use the table of small business size standards below, in place of the table included in the May 15, 2000, **Federal Register**.

DATES: Effective on October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA is publishing below a new complete table of small business size standards based on industries as they are defined in NAICS. This table corrects, updates and replaces the table included in the final rule SBA published in the **Federal Register** on May 15, 2000. The originally published table included a number of errors that occurred during the printing process. Because the errors are significant in nature and number, SBA believes that merely listing the corrections is not sufficient. Therefore, this new full table replaces the table found in the final rule published on May 15, 2000.

List of Corrected Errors

Page 30841—NAICS 211112—deleted under Subsector 115, where it is duplicated. It appears correctly in Subsector 211.

Page 30843—NAICS 311421—footnote "14" is corrected to read footnote "3."

Page 30850—NAICS 336413—added footnote "7," which had been omitted.

Page 30853—NAICS 448130—corrected size standard to "$5.0" million.

Page 30853—NAICS 448150—corrected size standard to "$5.0" million.

Page 30853—NAICS 452990—deleted redundant dollar sign.

Page 30853—NAICS 454110—corrected size standard to "$18.5" million.

Page 30854—NAICS 454311—deleted redundant dollar sign.

Page 30854—NAICS 481111—deleted dollar sign.

Page 30854—NAICS 481112—deleted dollar sign.

Page 30854—NAICS 481211—deleted dollar sign.

Page 30854—NAICS 481212 and NAICS 481219 corrected to read as follows:

481212	Nonscheduled Chartered Freight Air Transportation	1,500
EXCEPT	Except Offshore Marine Air Transportation Services	$20.5
481219	Other Nonscheduled Air Transportation	$5.0

Page 30854—NAICS 482111 through NAICS 483212—deleted dollar signs.

Page 30854—NAICS 511210—moved "$18.0" from the description column to the size standard column.

Page 30856—NAICS 522120 through NAICS 522210—added footnote "8."

Page 30856—NAICS 522293—added footnote "8."

Page 30857—added NAICS 531320 and NAICS 531390, which had been omitted, as follow:

531320	Offices of Real Estate Appraisers	$1.5
531390	Other Activities Related to Real Estate	$1.5

Page 30857—change NAICS 53212 to NAICS 532120.

Updated Size Standards:

Since May 15, 2000, SBA has published two final rules that modify existing size standards as they are described in the Standard Industrial Classification (SIC) system. SBA originally intended to issue **Federal Register** notices before October 1, 2000, to update the table of small business size standards based on NAICS that result from those changes. However, SBA is using this opportunity to include those changes here. The updates, based on final rules issued since May 15, 2000, are the following:

1. NAICS code 561320, Temporary Help Services, and NAICS code 561330, Employment Leasing Services—On June 6, 2000, SBA published a final rule establishing a size standard of $10 million in average annual receipts for Help Supply Services, SIC code 7363 (65 FR 35810–35813). The activities described by SIC 7363 are related to NAICS 561320 and NAICS 561330. Therefore, size standards NAICS 561320 and NAICS 561330 are being updated to conform the table of size standards based on NAICS to the June 6, 2000, **Federal Register** notice.

2. On June 16, 2000, SBA published a final rule in the **Federal Register** (65 FR 37689–37694) establishing a size standard of $27.5 million in average annual receipts for all industries in General Building Contractors, Standard Industrial Classification (SIC) Major Group 15, and for all industries except Dredging and Surface Cleanup Activities in Heavy Construction Other Than Building Construction, SIC Major Group 16; $17.0 million for Dredging and Surface Cleanup Activities, part of SIC 1629, Heavy Construction, Not Elsewhere Classified (NEC); $11.5 million for all industries in Special Trade Contractors, SIC Major Group 17; and $10.0 million for Garbage and Refuse Collection, Without Disposal, part of SIC 4212, Local Trucking Without Storage, and Refuse Systems, SIC 4953. As a result, the following NAICS codes, which are related to these SIC industries and activities, are revised accordingly, effective October 1, 2000. For additional information on how they are related, see SBA's proposed rule in the October 22, 1999, **Federal Register** (64 FR 57187–57286). Therefore, size standards for the following NAICS industries are being updated to conform the table of size standards based on NAICS to the June 16, 2000, **Federal Register** notice:

NAICS code	NAICS industry description	Size standards ($ million)
233210	Single Family Housing Construction	$27.5
233220	Multifamily Housing Construction	$27.5
233310	Manufacturing and Industrial Building Construction	$27.5
233320	Commercial and Institutional Building Construction	$27.5
234110	Highway and Street Construction	$27.5
234120	Bridge and Tunnel Construction	$27.5
234910	Water, Sewer, and Pipeline Construction	$27.5
234920	Power and Communication Transmission Line Construction	$27.5
234930	Industrial Nonbuilding Structure Construction	$27.5
234990	All Other Heavy Construction	$27.5
EXCEPT	Except Dredging and Surface Cleanup Activities	$17.0[2]
235110	Plumbing, Heating and Air-Conditioning Contractors	$11.5
235210	Painting and Wall Covering Contractors	$11.5
235310	Electrical Contractors	$11.5
235410	Masonry and Stone Contractors	$11.5
235420	Drywall, Plastering, Acoustical and Insulation Contractors	$11.5
235430	Tile, Marble, Terrazzo and Mosaic Contractors	$11.5
235510	Carpentry Contractors	$11.5
235520	Floor Laying and Other Floor Contractors	$11.5
235610	Roofing, Siding and Sheet Metal Contractors	$11.5
235710	Concrete Contractors	$11.5
235810	Water Well Drilling Contractors	$11.5
235910	Structural Steel Erection Contractors	$11.5
235920	Glass and Glazing Contractors	$11.5
235930	Excavation Contractors	$11.5
235940	Wrecking and Demolition Contractors	$11.5
235950	Building Equipment and Other Machinery Installation Contractors	$11.5
235990	All Other Special Trade Contractors	$11.5
EXCEPT	Base Housing Maintenance[13]	$11.5[13]
562111	Solid Waste Collection	$10.0
562112	Hazardous Waste Collection	$10.0

NAICS code	NAICS industry description	Size standards ($ million)
562119	Other Waste Collection	$10.0
562211	Hazardous Waste Treatment and Disposal	$10.0
562212	Solid Waste Landfill	$10.0
562213	Solid Waste Combustors and Incinerators	$10.0
562219	Other Nonhazardous Waste Treatment and Disposal	$10.0
562910	Remediation Services	$11.5
562920	Materials Recovery Facilities	$10.0

Other Changes:

SBA is also making other minor editorial changes at this time. They are the following:

(1) On page 30854, NAICS code 485110 is corrected to read NAICS code 485111.

(2) On page 30859, NAICS code 562111, Solid Waste Collection, is moved from its last place in Subsector 561, Administrative and Support Services, to first place in Subsector 562, Waste Management and Remediation Services.

(3) On page 30861, NAICS code 812391, Garment Pressing, and Agents for Laundries, and NAICS code 81239, All Other Laundry Services, are deleted. These activities are included in NAICS code 812320, Drycleaning and Laundry Services (except Coin-Operated) (see 63 FR 41699).

(4) The following NAICS Industry descriptive titles are changed:

NAICS code	NAICS Title as published on May 15, 2000	Corrected NAICS title
313112	Yarn Texturing, Throwing and Twisting Mills	Yarn Texturizing, Throwing and Twisting Mills.
323116	Manifold Business Form Printing	Manifold Business Forms Printing.
323117	Book Printing	Books Printing.
325998	All Other Chemical Product and Preparation Manufacturing	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
326121	Unsupported Plastics Profile Shape Manufacturing	Unsupported Plastics Profile Shapes Manufacturing.
327111	Vitreous China Plumbing Fixtures and China and Earthenware Bathroom Accessories Manufacturing.	Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing.
331513	Steel Foundries, (except Investment)	Steel Foundries (except Investment).
339912	Silverware and Plated Ware Manufacturing	Silverware and Hollowware Manufacturing.
421140	Motor Vehicle Part (Used) Wholesalers	Motor Vehicle Parts (Used) Wholesalers.
421810	Construction and Mining (except Petroleum) Machinery and Equipment Wholesalers.	Construction and Mining (except Oil Well) Machinery and Equipment Wholesalers.
485113	Bus and Motor Vehicle Transit Systems	Bus and Other Motor Vehicle Transit Systems.

(5) On page 30854 SBA is adding footnote 15 to Subsector 483, Water Transportation. This is the same footnote that was used (as footnote 8) in 13 CFR 121.601 up to and including the January 1, 1995, edition. Beginning with the March 1, 1996, edition of the 13 CFR 121, footnote 8 was omitted and "Offshore Marine Water Transportation Services" was added as a segment of SIC 4499, Water Transportation Services, N.E.C. SIC 4499 is related to a number of NAICS codes in Subsector 483. However, SBA omitted this segment from the October 22, 1999, proposed and the May 15, 2000, final rules. Rather than include numerous "exceptions," SBA is replacing the entire text of the footnote, as it could apply to any of the NAICS codes. This does not change or alter existing size standards for any activities, and is consistent with Guideline 4 in Table III of the October 22, 1999, proposed rule (64 FR 57191).

Note: SBA is publishing this table of small business size standards to replace the table that was part of the final rule published in the **Federal Register** on May 15, 2000 (65 FR 30836–30863). That rule contained a table with a large number of errors that were beyond SBA's control. This table does not change or modify any size standards. However, it has been updated to reflect changes that SBA has made to size standards since its May 15, 2000, publication. Those changes are stated in detail above.

Correction

In FR Doc. 00–11874 published on May 15, 2000 (65 FR 30840), make the following correction. On pages 30840 through 30863, correct § 121.201 by revising the table of "Small Business Size Standards by NAICS Industry" to read as follows:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
	Sector 11—Agriculture, Forestry and Fishing	
	Subsector 111—Crop Production	
111110	Soybean Farming	$0.5

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
111120	Oilseed (except Soybean) Farming	$0.5
111130	Dry Pea and Bean Farming	$0.5
111140	Wheat Farming	$0.5
111150	Corn Farming	$0.5
111160	Rice Farming	$0.5
111191	Oilseed and Grain Combination Farming	$0.5
111199	All Other Grain Farming	$0.5
111211	Potato Farming	$0.5
111219	Other Vegetable (except Potato) and Melon Farming	$0.5
111310	Orange Groves	$0.5
111320	Citrus (except Orange) Groves	$0.5
111331	Apple Orchards	$0.5
111332	Grape Vineyards	$0.5
111333	Strawberry Farming	$0.5
111334	Berry (except Strawberry) Farming	$0.5
111335	Tree Nut Farming	$0.5
111336	Fruit and Tree Nut Combination Farming	$0.5
111339	Other Noncitrus Fruit Farming	$0.5
111411	Mushroom Production	$0.5
111419	Other Food Crops Grown Under Cover	$0.5
111421	Nursery and Tree Production	$0.5
111422	Floriculture Production	$0.5
111910	Tobacco Farming	$0.5
111920	Cotton Farming	$0.5
111930	Sugarcane Farming	$0.5
111940	Hay Farming	$0.5
111991	Sugar Beet Farming	$0.5
111992	Peanut Farming	$0.5
111998	All Other Miscellaneous Crop Farming	$0.5
	Subsector 112—Animal Production	
112111	Beef Cattle Ranching and Farming	$0.5
112112	Cattle Feedlots	$1.5
112120	Dairy Cattle and Milk Production	$0.5
112210	Hog and Pig Farming	$0.5
112310	Chicken Egg Production	$9.0
112320	Broilers and Other Meat Type Chicken Production	$0.5
112330	Turkey Production	$0.5
112340	Poultry Hatcheries	$0.5
112390	Other Poultry Production	$0.5
112410	Sheep Farming	$0.5
112420	Goat Farming	$0.5
112511	Finfish Farming and Fish Hatcheries	$0.5
112512	Shellfish Farming	$0.5
112519	Other Animal Aquaculture	$0.5
112910	Apiculture	$0.5
112920	Horse and Other Equine Production	$0.5
112930	Fur-Bearing Animal and Rabbit Production	$0.5
112990	All Other Animal Production	$0.5
	Subsector 113—Forestry and Logging	
113110	Timber Tract Operations	$5.0
113210	Forest Nurseries and Gathering of Forest Products	$5.0
113310	Logging	500
	Subsector 114—Fishing, Hunting and Trapping	
114111	Finfish Fishing	$3.0
114112	Shellfish Fishing	$3.0
114119	Other Marine Fishing	$3.0
114210	Hunting and Trapping	$3.0
	Subsector 115—Support Activities for Agriculture and Forestry	
115111	Cotton Ginning	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
115112	Soil Preparation, Planting, and Cultivating	$5.0
115113	Crop Harvesting, Primarily by Machine	$5.0
115114	Postharvest Crop Activities (except Cotton Ginning)	$5.0
115115	Farm Labor Contractors and Crew Leaders	$5.0
115116	Farm Management Services	$5.0
115210	Support Activities for Animal Production	$5.0
115310	Support Activities for Forestry	$5.0
	Sector 21—Mining	
	Subsector 211—Oil and Gas Extraction	
211111	Crude Petroleum and Natural Gas Extraction	500
211112	Natural Gas Liquid Extraction	500
	Subsector 212—Mining (except Oil and Gas)	
212111	Bituminous Coal and Lignite Surface Mining	500
212112	Bituminous Coal Underground Mining	500
212113	Anthracite Mining	500
212210	Iron Ore Mining	500
212221	Gold Ore Mining	500
212222	Silver Ore Mining	500
212231	Lead Ore and Zinc Ore Mining	500
212234	Copper Ore and Nickel Ore Mining	500
212291	Uranium-Radium-Vanadium Ore Mining	500
212299	All Other Metal Ore Mining	500
212311	Dimension Stone Mining and Quarrying	500
212312	Crushed and Broken Limestone Mining and Quarrying	500
212313	Crushed and Broken Granite Mining and Quarrying	500
212319	Other Crushed and Broken Stone Mining and Quarrying	500
212321	Construction Sand and Gravel Mining	500
212322	Industrial Sand Mining	500
212324	Kaolin and Ball Clay Mining	500
212325	Clay and Ceramic and Refractory Minerals Mining	500
212391	Potash, Soda, and Borate Mineral Mining	500
212392	Phosphate Rock Mining	500
212393	Other Chemical and Fertilizer Mineral Mining	500
212399	All Other Nonmetallic Mineral Mining	500
213111	Drilling Oil and Gas Wells	500
213112	Support Activities for Oil and Gas Operations	$5.0
213113	Support Activities for Coal Mining	$5.0
213114	Support Activities for Metal Mining	$5.0
213115	Support Activities for Nonmetallic Minerals (except Fuels)	$5.0
	Sector 22—Utilities	
	Subsector 221—Utilities	
221111	Hydroelectric Power Generation	4 mil megawatt hours [1]
221112	Fossil Fuel Electric Power Generation	4 mil megawatt hours [1]
221113	Nuclear Electric Power Generation	4 mil megawatt hours [1]
221119	Other Electric Power Generation	4 mil megawatt hours [1]
221121	Electric Bulk Power Transmission and Control	4 mil megawatt hours [1]
221122	Electric Power Distribution	4 mil megawatt hours [1]

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
221210	Natural Gas Distribution	500
221310	Water Supply and Irrigation Systems	$5.0
221320	Sewage Treatment Facilities	$5.0
221330	Steam and Air-Conditioning Supply	$9.0
	Sector 23—Construction	
	Subsector 233—Building, Developing and General Contracting	
233110	Land Subdivision and Land Development	$5.0
233210	Single Family Housing Construction	$27.5
233220	Multifamily Housing Construction	$27.5
233310	Manufacturing and Industrial Building Construction	$27.5
233320	Commercial and Institutional Building Construction	$27.5
	Subsector 234—Heavy Construction	
234110	Highway and Street Construction	$27.5
234120	Bridge and Tunnel Construction	$27.5
234910	Water, Sewer, and Pipeline Construction	$27.5
234920	Power and Communication Transmission Line Construction	$27.5
234930	Industrial Nonbuilding Structure Construction	$27.5
234990	All Other Heavy Construction	$27.5
EXCEPT	Except Dredging and Surface Cleanup Activities	$17.0[2]
	Subsector 235—Special Trade Contractors	
235110	Plumbing, Heating and Air-Conditioning Contractors	$11.5
235210	Painting and Wall Covering Contractors	$11.5
235310	Electrical Contractors	$11.5
235410	Masonry and Stone Contractors	$11.5
235420	Drywall, Plastering, Acoustical and Insulation Contractors	$11.5
235430	Tile, Marble, Terrazzo and Mosaic Contractors	$11.5
235510	Carpentry Contractors	$11.5
235520	Floor Laying and Other Floor Contractors	$11.5
235610	Roofing, Siding and Sheet Metal Contractors	$11.5
235710	Concrete Contractors	$11.5
235810	Water Well Drilling Contractors	$11.5
235910	Structural Steel Erection Contractors	$11.5
235920	Glass and Glazing Contractors	$11.5
235930	Excavation Contractors	$11.5
235940	Wrecking and Demolition Contractors	$11.5
235950	Building Equipment and Other Machinery Installation Contractors	$11.5
235990	All Other Special Trade Contractors	$11.5
EXCEPT	Base Housing Maintenance[13]	$11.5[13]
	Sectors 31–33—Manufacturing	
	Subsector 311—Food Manufacturing	
311111	Dog and Cat Food Manufacturing	500
311119	Other Animal Food Manufacturing	500
311211	Flour Milling	500
311212	Rice Milling	500
311213	Malt Manufacturing	500
311221	Wet Corn Milling	750
311222	Soybean Processing	500
311223	Other Oilseed Processing	1,000
311225	Fats and Oils Refining and Blending	1,000
311230	Breakfast Cereal Manufacturing	1,000
311311	Sugarcane Mills	500
311312	Cane Sugar Refining	750
311313	Beet Sugar Manufacturing	750
311320	Chocolate and Confectionery Manufacturing from Cacao Beans	500
311330	Confectionery Manufacturing from Purchased Chocolate	500
311340	Non-Chocolate Confectionery Manufacturing	500
311411	Frozen Fruit, Juice and Vegetable Manufacturing	500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
311412	Frozen Specialty Food Manufacturing	500
311421	Fruit and Vegetable Canning	500 [3]
311422	Specialty Canning	1,000
311423	Dried and Dehydrated Food Manufacturing	500
311511	Fluid Milk Manufacturing	500
311512	Creamery Butter Manufacturing	500
311513	Cheese Manufacturing	500
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	500
311520	Ice Cream and Frozen Dessert Manufacturing	500
311611	Animal (except Poultry) Slaughtering	500
311612	Meat Processed from Carcasses	500
311613	Rendering and Meat By-product Processing	500
311615	Poultry Processing	500
311711	Seafood Canning	500
311712	Fresh and Frozen Seafood Processing	500
311811	Retail Bakeries	500
311812	Commercial Bakeries	500
311813	Frozen Cakes, Pies, and Other Pastries Manufacturing	500
311821	Cookie and Cracker Manufacturing	750
311822	Flour Mixes and Dough Manufacturing from Purchased Flour	500
311823	Dry Pasta Manufacturing	500
311830	Tortilla Manufacturing	500
311911	Roasted Nuts and Peanut Butter Manufacturing	500
311919	Other Snack Food Manufacturing	500
311920	Coffee and Tea Manufacturing	500
311930	Flavoring Syrup and Concentrate Manufacturing	500
311941	Mayonnaise, Dressing and Other Prepared Sauce Manufacturing	500
311942	Spice and Extract Manufacturing	500
311991	Perishable Prepared Food Manufacturing	500
311999	All Other Miscellaneous Food Manufacturing	500
	Subsector 312—Beverage and Tobacco Product Manufacturing	
312111	Soft Drink Manufacturing	500
312112	Bottled Water Manufacturing	500
312113	Ice Manufacturing	500
312120	Breweries	500
312130	Wineries	500
312140	Distilleries	750
312210	Tobacco Stemming and Redrying	500
312221	Cigarette Manufacturing	1,000
312229	Other Tobacco Product Manufacturing	500
	Subsector 313—Textile Mills	
313111	Yarn Spinning Mills	500
313112	Yarn Texturizing, Throwing and Twisting Mills	500
313113	Thread Mills	500
313210	Broadwoven Fabric Mills	1,000
313221	Narrow Fabric Mills	500
313222	Schiffli Machine Embroidery	500
313230	Nonwoven Fabric Mills	500
313241	Weft Knit Fabric Mills	500
313249	Other Knit Fabric and Lace Mills	500
313311	Broadwoven Fabric Finishing Mills	1,000
313312	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	500
313320	Fabric Coating Mills	1,000
	Subsector 314—Textile Product Mills	
314110	Carpet and Rug Mills	500
314121	Curtain and Drapery Mills	500
314129	Other Household Textile Product Mills	500
314911	Textile Bag Mills	500
314912	Canvas and Related Product Mills	500
314991	Rope, Cordage and Twine Mills	500
314992	Tire Cord and Tire Fabric Mills	1,000

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
314999	All Other Miscellaneous Textile Product Mills	500
	Subsector 315—Apparel Manufacturing	
315111	Sheer Hosiery Mills	500
315119	Other Hosiery and Sock Mills	500
315191	Outerwear Knitting Mills	500
315192	Underwear and Nightwear Knitting Mills	500
315211	Men's and Boys' Cut and Sew Apparel Contractors	500
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	500
315221	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing	500
315222	Men's and Boys' Cut and Sew Suit, Coat and Overcoat Manufacturing	500
315223	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing	500
315224	Men's and Boys' Cut and Sew Trouser, Slack and Jean Manufacturing	500
315225	Men's and Boys' Cut and Sew Work Clothing Manufacturing	500
315228	Men's and Boys' Cut and Sew Other Outerwear Manufacturing	500
315231	Women's and Girls' Cut and Sew Lingerie, Loungewear and Nightwear Manufacturing	500
315232	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing	500
315233	Women's and Girls' Cut and Sew Dress Manufacturing	500
315234	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket and Skirt Manufacturing	500
315239	Women's and Girls' Cut and Sew Other Outerwear Manufacturing	500
315291	Infants' Cut and Sew Apparel Manufacturing	500
315292	Fur and Leather Apparel Manufacturing	500
315299	All Other Cut and Sew Apparel Manufacturing	500
315991	Hat, Cap and Millinery Manufacturing	500
315992	Glove and Mitten Manufacturing	500
315993	Men's and Boys' Neckwear Manufacturing	500
315999	Other Apparel Accessories and Other Apparel Manufacturing	500
	Subsector 316—Leather and Allied Product Manufacturing	
316110	Leather and Hide Tanning and Finishing	500
316211	Rubber and Plastics Footwear Manufacturing	1,000
316212	House Slipper Manufacturing	500
316213	Men's Footwear (except Athletic) Manufacturing	500
316214	Women's Footwear (except Athletic) Manufacturing	500
316219	Other Footwear Manufacturing	500
316991	Luggage Manufacturing	500
316992	Women's Handbag and Purse Manufacturing	500
316993	Personal Leather Good (except Women's Handbag and Purse) Manufacturing	500
316999	All Other Leather Good Manufacturing	500
	Subsector 321—Wood Product Manufacturing	
321113	Sawmills	500
321114	Wood Preservation	500
321211	Hardwood Veneer and Plywood Manufacturing	500
321212	Softwood Veneer and Plywood Manufacturing	500
321213	Engineered Wood Member (except Truss) Manufacturing	500
321214	Truss Manufacturing	500
321219	Reconstituted Wood Product Manufacturing	500
321911	Wood Window and Door Manufacturing	500
321912	Cut Stock, Resawing Lumber, and Planing	500
321918	Other Millwork (including Flooring)	500
321920	Wood Container and Pallet Manufacturing	500
321991	Manufactured Home (Mobile Home) Manufacturing	500
321992	Prefabricated Wood Building Manufacturing	500
321999	All Other Miscellaneous Wood Product Manufacturing	500
	Subsector 322—Paper Manufacturing	
322110	Pulp Mills	750
322121	Paper (except Newsprint) Mills	750
322122	Newsprint Mills	750
322130	Paperboard Mills	750
322211	Corrugated and Solid Fiber Box Manufacturing	500
322212	Folding Paperboard Box Manufacturing	750

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
322213	Setup Paperboard Box Manufacturing	500
322214	Fiber Can, Tube, Drum, and Similar Products Manufacturing	500
322215	Non-Folding Sanitary Food Container Manufacturing	750
322221	Coated and Laminated Packaging Paper and Plastics Film Manufacturing	500
322222	Coated and Laminated Paper Manufacturing	500
322223	Plastics, Foil, and Coated Paper Bag Manufacturing	500
322224	Uncoated Paper and Multiwall Bag Manufacturing	500
322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses	500
322226	Surface-Coated Paperboard Manufacturing	500
322231	Die-Cut Paper and Paperboard Office Supplies Manufacturing	500
322232	Envelope Manufacturing	500
322233	Stationery, Tablet, and Related Product Manufacturing	500
322291	Sanitary Paper Product Manufacturing	500
322299	All Other Converted Paper Product Manufacturing	500
	Subsector 323—Printing and Related Support Activities	
323110	Commercial Lithographic Printing	500
323111	Commercial Gravure Printing	500
323112	Commercial Flexographic Printing	500
323113	Commercial Screen Printing	500
323114	Quick Printing	500
323115	Digital Printing	500
323116	Manifold Business Forms Printing	500
323117	Books Printing	500
323118	Blankbook, Loose-leaf Binders and Devices Manufacturing	500
323119	Other Commercial Printing	500
323121	Tradebinding and Related Work	500
323122	Prepress Services	500
	Subsector 324—Petroleum and Coal Products Manufacturing	
324110	Petroleum Refineries	1,500 [4]
324121	Asphalt Paving Mixture and Block Manufacturing	500
324122	Asphalt Shingle and Coating Materials Manufacturing	750
324191	Petroleum Lubricating Oil and Grease Manufacturing	500
324199	All Other Petroleum and Coal Products Manufacturing	500
	Subsector 325—Chemical Manufacturing	
325110	Petrochemical Manufacturing	1,000
325120	Industrial Gas Manufacturing	1,000
325131	Inorganic Dye and Pigment Manufacturing	1,000
325132	Synthetic Organic Dye and Pigment Manufacturing	750
325181	Alkalies and Chlorine Manufacturing	1,000
325182	Carbon Black Manufacturing	500
325188	All Other Basic Inorganic Chemical Manufacturing	1,000
325191	Gum and Wood Chemical Manufacturing	500
325192	Cyclic Crude and Intermediate Manufacturing	750
325193	Ethyl Alcohol Manufacturing	1,000
325199	All Other Basic Organic Chemical Manufacturing	1,000
325211	Plastics Material and Resin Manufacturing	750
325212	Synthetic Rubber Manufacturing	1,000
325221	Cellulosic Organic Fiber Manufacturing	1,000
325222	Noncellulosic Organic Fiber Manufacturing	1,000
325311	Nitrogenous Fertilizer Manufacturing	1,000
325312	Phosphatic Fertilizer Manufacturing	500
325314	Fertilizer (Mixing Only) Manufacturing	500
325320	Pesticide and Other Agricultural Chemical Manufacturing	500
325411	Medicinal and Botanical Manufacturing	750
325412	Pharmaceutical Preparation Manufacturing	750
325413	In-Vitro Diagnostic Substance Manufacturing	500
325414	Biological Product (except Diagnostic) Manufacturing	500
325510	Paint and Coating Manufacturing	500
325520	Adhesive Manufacturing	500
325611	Soap and Other Detergent Manufacturing	750
325612	Polish and Other Sanitation Good Manufacturing	500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
325613	Surface Active Agent Manufacturing	500
325620	Toilet Preparation Manufacturing	500
325910	Printing Ink Manufacturing	500
325920	Explosives Manufacturing	750
325991	Custom Compounding of Purchased Resins	500
325992	Photographic Film, Paper, Plate and Chemical Manufacturing	500
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	500
	Subsector 326—Plastics and Rubber Products Manufacturing	
326111	Unsupported Plastics Bag Manufacturing	500
326112	Unsupported Plastics Packaging Film and Sheet Manufacturing	500
326113	Unsupported Plastics Film and Sheet (except Packaging) Manufacturing	500
326121	Unsupported Plastics Profile Shapes Manufacturing	500
326122	Plastics Pipe and Pipe Fitting Manufacturing	500
326130	Laminated Plastics Plate, Sheet and Shape Manufacturing	500
326140	Polystyrene Foam Product Manufacturing	500
326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing	500
326160	Plastics Bottle Manufacturing	500
326191	Plastics Plumbing Fixture Manufacturing	500
326192	Resilient Floor Covering Manufacturing	750
326199	All Other Plastics Product Manufacturing	500
326211	Tire Manufacturing (except Retreading)	1,000 [5]
326212	Tire Retreading	500
326220	Rubber and Plastics Hoses and Belting Manufacturing	500
326291	Rubber Product Manufacturing for Mechanical Use	500
326299	All Other Rubber Product Manufacturing	500
	Subsector 327—Nonmetallic Mineral Product Manufacturing	
327111	Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing	750
327112	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing	500
327113	Porcelain Electrical Supply Manufacturing	500
327121	Brick and Structural Clay Tile Manufacturing	500
327122	Ceramic Wall and Floor Tile Manufacturing	500
327123	Other Structural Clay Product Manufacturing	500
327124	Clay Refractory Manufacturing	500
327125	Nonclay Refractory Manufacturing	750
327211	Flat Glass Manufacturing	1,000
327212	Other Pressed and Blown Glass and Glassware Manufacturing	750
327213	Glass Container Manufacturing	750
327215	Glass Product Manufacturing Made of Purchased Glass	500
327310	Cement Manufacturing	750
327320	Ready-Mix Concrete Manufacturing	500
327331	Concrete Block and Brick Manufacturing	500
327332	Concrete Pipe Manufacturing	500
327390	Other Concrete Product Manufacturing	500
327410	Lime Manufacturing	500
327420	Gypsum Product Manufacturing	1,000
327910	Abrasive Product Manufacturing	500
327991	Cut Stone and Stone Product Manutacturing	500
327992	Ground or Treated Mineral and Earth Manufacturing	500
327993	Mineral Wool Manufacturing	750
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	500
	Subsector 331—Primary Metal Manufacturing	
331111	Iron and Steel Mills	1,000
331112	Electrometallurgical Ferroalloy Product Manufacturing	750
331210	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel	1,000
331221	Cold-Rolled Steel Shape Manufacturing	1,000
331222	Steel Wire Drawing	1,000
331311	Alumina Refining	1,000
331312	Primary Aluminum Production	1,000
331314	Secondary Smelting and Alloying of Aluminum	750
331315	Aluminum Sheet, Plate and Foil Manufacturing	750
331316	Aluminum Extruded Product Manufacturing	750

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
331319	Other Aluminum Rolling and Drawing	750
331411	Primary Smelting and Refining of Copper	1,000
331419	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum)	750
331421	Copper Rolling, Drawing and Extruding	750
331422	Copper Wire (except Mechanical) Drawing	1,000
331423	Secondary Smelting, Refining, and Alloying of Copper	750
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing and Extruding	750
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)	750
331511	Iron Foundries	500
331512	Steel Investment Foundries	500
331513	Steel Foundries (except Investment)	500
331521	Aluminum Die-Casting Foundries	500
331522	Nonferrous (except Aluminum) Die-Casting Foundries	500
331524	Aluminum Foundries (except Die-Casting)	500
331525	Copper Foundries (except Die-Casting)	500
331528	Other Nonferrous Foundries (except Die-Casting)	500
	Subsector 332—Fabricated Metal Product Manufacturing	
332111	Iron and Steel Forging	500
332112	Nonferrous Forging	500
332114	Custom Roll Forming	500
332115	Crown and Closure Manufacturing	500
332116	Metal Stamping	500
332117	Powder Metallurgy Part Manufacturing	500
332211	Cutlery and Flatware (except Precious) Manufacturing	500
332212	Hand and Edge Tool Manufacturing	500
332213	Saw Blade and Handsaw Manufacturing	500
332214	Kitchen Utensil, Pot and Pan Manufacturing	500
332311	Prefabricated Metal Building and Component Manufacturing	500
332312	Fabricated Structural Metal Manufacturing	500
332313	Plate Work Manufacturing	500
332321	Metal Window and Door Manufacturing	500
332322	Sheet Metal Work Manufacturing	500
332323	Ornamental and Architectural Metal Work Manufacturing	500
332410	Power Boiler and Heat Exchanger Manufacturing	500
332420	Metal Tank (Heavy Gauge) Manufacturing	500
332431	Metal Can Manufacturing	1,000
332439	Other Metal Container Manufacturing	500
332510	Hardware Manufacturing	500
332611	Spring (Heavy Gauge) Manufacturing	500
332612	Spring (Light Gauge) Manufacturing	500
332618	Other Fabricated Wire Product Manufacturing	500
332710	Machine Shops	500
332721	Precision Turned Product Manufacturing	500
332722	Bolt, Nut, Screw, Rivet and Washer Manufacturing	500
332811	Metal Heat Treating	750
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers	500
332813	Electroplating, Plating, Polishing, Anodizing and Coloring	500
332911	Industrial Valve Manufacturing	500
332912	Fluid Power Valve and Hose Fitting Manufacturing	500
332913	Plumbing Fixture Fitting and Trim Manufacturing	500
332919	Other Metal Valve and Pipe Fitting Manufacturing	500
332991	Ball and Roller Bearing Manufacturing	750
332992	Small Arms Ammunition Manufacturing	1,000
332993	Ammunition (except Small Arms) Manufacturing	1,500
332994	Small Arms Manufacturing	1,000
332995	Other Ordnance and Accessories Manufacturing	500
332996	Fabricated Pipe and Pipe Fitting Manufacturing	500
332997	Industrial Pattern Manufacturing	500
332998	Enameled Iron and Metal Sanitary Ware Manufacturing	750
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	500
	Subsector 333—Machinery Manufacturing[6]	
333111	Farm Machinery and Equipment Manufacturing	500
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing	500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
333120	Construction Machinery Manufacturing	750
333131	Mining Machinery and Equipment Manufacturing	500
333132	Oil and Gas Field Machinery and Equipment Manufacturing	500
333210	Sawmill and Woodworking Machinery Manufacturing	500
333220	Plastics and Rubber Industry Machinery Manufacturing	500
333291	Paper Industry Machinery Manufacturing	500
333292	Textile Machinery Manufacturing	500
333293	Printing Machinery and Equipment Manufacturing	500
333294	Food Product Machinery Manufacturing	500
333295	Semiconductor Machinery Manufacturing	500
333298	All Other Industrial Machinery Manufacturing	500
333311	Automatic Vending Machine Manufacturing	500
333312	Commercial Laundry, Drycleaning and Pressing Machine Manufacturing	500
333313	Office Machinery Manufacturing	1,000
333314	Optical Instrument and Lens Manufacturing	500
333315	Photographic and Photocopying Equipment Manufacturing	500
333319	Other Commercial and Service Industry Machinery Manufacturing	500
333411	Air Purification Equipment Manufacturing	500
333412	Industrial and Commercial Fan and Blower Manufacturing	500
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing	500
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	750
333511	Industrial Mold Manufacturing	500
333512	Machine Tool (Metal Cutting Types) Manufacturing	500
333513	Machine Tool (Metal Forming Types) Manufacturing	500
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing	500
333515	Cutting Tool and Machine Tool Accessory Manufacturing	500
333516	Rolling Mill Machinery and Equipment Manufacturing	500
333518	Other Metalworking Machinery Manufacturing	500
333611	Turbine and Turbine Generator Set Unit Manufacturing	1,000
333612	Speed Changer, Industrial High-Speed Drive and Gear Manufacturing	500
333613	Mechanical Power Transmission Equipment Manufacturing	500
333618	Other Engine Equipment Manufacturing	1,000
333911	Pump and Pumping Equipment Manufacturing	500
333912	Air and Gas Compressor Manufacturing	500
333913	Measuring and Dispensing Pump Manufacturing	500
333921	Elevator and Moving Stairway Manufacturing	500
333922	Conveyor and Conveying Equipment Manufacturing	500
333923	Overhead Traveling Crane, Hoist and Monorail System Manufacturing	500
333924	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing	750
333991	Power-Driven Hand Tool Manufacturing	500
333992	Welding and Soldering Equipment Manufacturing	500
333993	Packaging Machinery Manufacturing	500
333994	Industrial Process Furnace and Oven Manufacturing	500
333995	Fluid Power Cylinder and Actuator Manufacturing	500
333996	Fluid Power Pump and Motor Manufacturing	500
333997	Scale and Balance (except Laboratory) Manufacturing	500
333999	All Other Miscellaneous General Purpose Machinery Manufacturing	500
	Subsector 334—Computer and Electronic Product Manufacturing[6]	
334111	Electronic Computer Manufacturing	1,000
334112	Computer Storage Device Manufacturing	1,000
334113	Computer Terminal Manufacturing	1,000
334119	Other Computer Peripheral Equipment Manufacturing	1,000
334210	Telephone Apparatus Manufacturing	1,000
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	750
334290	Other Communications Equipment Manufacturing	750
334310	Audio and Video Equipment Manufacturing	750
334411	Electron Tube Manufacturing	750
334412	Bare Printed Circuit Board Manufacturing	500
334413	Semiconductor and Related Device Manufacturing	500
334414	Electronic Capacitor Manufacturing	500
334415	Electronic Resistor Manufacturing	500
334416	Electronic Coil, Transformer, and Other Inductor Manufacturing	500
334417	Electronic Connector Manufacturing	500
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing	500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
334419	Other Electronic Component Manufacturing	500
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing	500
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing	750
334512	Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use	500
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables	500
334514	Totalizing Fluid Meter and Counting Device Manufacturing	500
334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals	500
334516	Analytical Laboratory Instrument Manufacturing	500
334517	Irradiation Apparatus Manufacturing	500
334518	Watch, Clock, and Part Manufacturing	500
334519	Other Measuring and Controlling Device Manufacturing	500
334611	Software Reproducing	500
334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing	750
334613	Magnetic and Optical Recording Media Manufacturing	1,000
	Subsector 335—Electrical Equipment, Appliance and Component Manufacturing [6]	
335110	Electric Lamp Bulb and Part Manufacturing	1,000
335121	Residential Electric Lighting Fixture Manufacturing	500
335122	Commercial, Industrial and Institutional Electric Lighting Fixture Manufacturing	500
335129	Other Lighting Equipment Manufacturing	500
335211	Electric Housewares and Household Fan Manufacturing	750
335212	Household Vacuum Cleaner Manufacturing	750
335221	Household Cooking Appliance Manufacturing	750
335222	Household Refrigerator and Home Freezer Manufacturing	1,000
335224	Household Laundry Equipment Manufacturing	1,000
335228	Other Major Household Appliance Manufacturing	500
335311	Power, Distribution and Specialty Transformer Manufacturing	750
335312	Motor and Generator Manufacturing	1,000
335313	Switchgear and Switchboard Apparatus Manufacturing	750
335314	Relay and Industrial Control Manufacturing	750
335911	Storage Battery Manufacturing	500
335912	Primary Battery Manufacturing	1,000
335921	Fiber Optic Cable Manufacturing	1,000
335929	Other Communication and Energy Wire Manufacturing	1,000
335931	Current-Carrying Wiring Device Manufacturing	500
335932	Noncurrent-Carrying Wiring Device Manufacturing	500
335991	Carbon and Graphite Product Manufacturing	750
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing	500
	Subsector 336—Transportation Equipment Manufacturing [6]	
336111	Automobile Manufacturing	1,000
336112	Light Truck and Utility Vehicle Manufacturing	1,000
336120	Heavy Duty Truck Manufacturing	1,000
336211	Motor Vehicle Body Manufacturing	1,000
336212	Truck Trailer Manufacturing	500
336213	Motor Home Manufacturing	1,000
336214	Travel Trailer and Camper Manufacturing	500
336311	Carburetor, Piston, Piston Ring and Valve Manufacturing	500
336312	Gasoline Engine and Engine Parts Manufacturing	750
336321	Vehicular Lighting Equipment Manufacturing	500
336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing	750
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing	750
336340	Motor Vehicle Brake System Manufacturing	750
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing	750
336360	Motor Vehicle Seating and Interior Trim Manufacturing	500
336370	Motor Vehicle Metal Stamping	500
336391	Motor Vehicle Air-Conditioning Manufacturing	750
336399	All Other Motor Vehicle Parts Manufacturing	750
336411	Aircraft Manufacturing	1,500
336412	Aircraft Engine and Engine Parts Manufacturing	1,000
336413	Other Aircraft Part and Auxiliary Equipment Manufacturing	1,000 [7]
336414	Guided Missile and Space Vehicle Manufacturing	1,000
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing	1,000
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing	1,000

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
336510	Railroad Rolling Stock Manufacturing	1,000
336611	Ship Building and Repairing	1,000
336612	Boat Building	500
336991	Motorcycle, Bicycle and Parts Manufacturing	500
336992	Military Armored Vehicle, Tank and Tank Component Manufacturing	1,000
336999	All Other Transportation Equipment Manufacturing	500
	Subsector 337—Furniture and Related Product Manufacturing	
337110	Wood Kitchen Cabinet and Counter Top Manufacturing	500
337121	Upholstered Household Furniture Manufacturing	500
337122	Nonupholstered Wood Household Furniture Manufacturing	500
337124	Metal Household Furniture Manufacturing	500
337125	Household Furniture (except Wood and Metal) Manufacturing	500
337127	Institutional Furniture Manufacturing	500
337129	Wood Television, Radio, and Sewing Machine Cabinet Manufacturing	500
337211	Wood Office Furniture Manufacturing	500
337212	Custom Architectural Woodwork and Millwork Manufacturing	500
337214	Office Furniture (Except Wood) Manufacturing	500
337215	Showcase, Partition, Shelving, and Locker Manufacturing	500
337910	Mattress Manufacturing	500
337920	Blind and Shade Manufacturing	500
	Subsector 339—Miscellaneous Manufacturing	
339111	Laboratory Apparatus and Furniture Manufacturing	500
339112	Surgical and Medical Instrument Manufacturing	500
339113	Surgical Appliance and Supplies Manufacturing	500
339114	Dental Equipment and Supplies Manufacturing	500
339115	Ophthalmic Goods Manufacturing	500
339116	Dental Laboratories	500
339911	Jewelry (except Costume) Manufacturing	500
339912	Silverware and Hollowware Manufacturing	500
339913	Jewelers' Material and Lapidary Work Manufacturing	500
339914	Costume Jewelry and Novelty Manufacturing	500
339920	Sporting and Athletic Goods Manufacturing	500
339931	Doll and Stuffed Toy Manufacturing	500
339932	Game, Toy, and Children's Vehicle Manufacturing	500
339941	Pen and Mechanical Pencil Manufacturing	500
339942	Lead Pencil and Art Good Manufacturing	500
339943	Marking Device Manufacturing	500
339944	Carbon Paper and Inked Ribbon Manufacturing	500
339950	Sign Manufacturing	500
339991	Gasket, Packing, and Sealing Device Manufacturing	500
339992	Musical Instrument Manufacturing	500
339993	Fastener, Button, Needle and Pin Manufacturing	500
339994	Broom, Brush and Mop Manufacturing	500
339995	Burial Casket Manufacturing	500
339999	All Other Miscellaneous Manufacturing	500
	Sector 42—Wholesale Trade (Not applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
	Subsector 421—Wholesale Trade—Durable Goods	
421110	Automobile and Other Motor Vehicle Wholesalers	100
421120	Motor Vehicle Supplies and New Part Wholesalers	100
421130	Tire and Tube Wholesalers	100
421140	Motor Vehicle Parts (Used) Wholesalers	100
421210	Furniture Wholesalers	100
421220	Home Furnishing Wholesalers	100
421310	Lumber, Plywood, Millwork and Wood Panel Wholesalers	100
421320	Brick, Stone and Related Construction Material Wholesalers	100
421330	Roofing, Siding and Insulation Material Wholesalers	100
421390	Other Construction Material Wholesalers	100
421410	Photographic Equipment and Supplies Wholesalers	100

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
421420	Office Equipment Wholesalers	100
421430	Computer and Computer Peripheral Equipment and Software Wholesalers	100
421440	Other Commercial Equipment Wholesalers	100
421450	Medical, Dental and Hospital Equipment and Supplies Wholesalers	100
421460	Ophthalmic Goods Wholesalers	100
421490	Other Professional Equipment and Supplies Wholesalers	100
421510	Metal Service Centers and Offices	100
421520	Coal and Other Mineral and Ore Wholesalers	100
421610	Electrical Apparatus and Equipment, Wiring Supplies and Construction Material Wholesalers	100
421620	Electrical Appliance, Television and Radio Set Wholesalers	100
421690	Other Electronic Parts and Equipment Wholesalers	100
421710	Hardware Wholesalers	100
421720	Plumbing and Heating Equipment and Supplies (Hydronics) Wholesalers	100
421730	Warm Air Heating and Air-Conditioning Equipment and Supplies Wholesalers	100
421740	Refrigeration Equipment and Supplies Wholesalers	100
421810	Construction and Mining (except Oil Well) Machinery and Equipment Wholesalers	100
421820	Farm and Garden Machinery and Equipment Wholesalers	100
421830	Industrial Machinery and Equipment Wholesalers	100
421840	Industrial Supplies Wholesalers	100
421850	Service Establishment Equipment and Supplies Wholesalers	100
421860	Transportation Equipment and Supplies (except Motor Vehicle) Wholesalers	100
421910	Sporting and Recreational Goods and Supplies Wholesalers	100
421920	Toy and Hobby Goods and Supplies Wholesalers	100
421930	Recyclable Material Wholesalers	100
421940	Jewelry, Watch, Precious Stone and Precious Metal Wholesalers	100
421990	Other Miscellaneous Durable Goods Wholesalers	100
	Subsector 422—Wholesale Trade—Nondurable Goods	
422110	Printing and Writing Paper Wholesalers	100
422120	Stationary and Office Supplies Wholesalers	100
422130	Industrial and Personal Service Paper Wholesalers	100
422210	Drugs and Druggists' Sundries Wholesalers	100
422310	Piece Goods, Notions and Other Dry Goods Wholesalers	100
422320	Men's and Boys' Clothing and Furnishings Wholesalers	100
422330	Women's, Children's, and Infants' Clothing and Accessories Wholesalers	100
422340	Footwear Wholesalers	100
422410	General Line Grocery Wholesalers	100
422420	Packaged Frozen Food Wholesalers	100
422430	Dairy Product (except Dried or Canned) Wholesalers	100
422440	Poultry and Poultry Product Wholesalers	100
422450	Confectionery Wholesalers	100
422460	Fish and Seafood Wholesalers	100
422470	Meat and Meat Product Wholesalers	100
422480	Fresh Fruit and Vegetable Wholesalers	100
422490	Other Grocery and Related Products Wholesalers	100
422510	Grain and Field Bean Wholesalers	100
422520	Livestock Wholesalers	100
422590	Other Farm Product Raw Material Wholesalers	100
422610	Plastics Materials and Basic Forms and Shapes Wholesalers	100
422690	Other Chemical and Allied Products Wholesalers	100
422710	Petroleum Bulk Stations and Terminals	100
422720	Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals)	100
422810	Beer and Ale Wholesalers	100
422820	Wine and Distilled Alcoholic Beverage Wholesalers	100
422910	Farm Supplies Wholesalers	100
422920	Book, Periodical and Newspaper Wholesalers	100
422930	Flower, Nursery Stock and Florists' Supplies Wholesalers	100
422940	Tobacco and Tobacco Product Wholesalers	100
422950	Paint, Varnish and Supplies Wholesalers	100
422990	Other Miscellaneous Nondurable Goods Wholesalers	100
	Sectors 44–45—Retail Trade	
	Subsector 441—Motor Vehicle and Parts Dealers	
441110	New Car Dealers	$21.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
441120	Used Car Dealers	$17.0
441210	Recreational Vehicle Dealers	$5.0
441221	Motorcycle Dealers	$5.0
441222	Boat Dealers	$5.0
441229	All Other Motor Vehicle Dealers	$5.0
EXCEPT	Aircraft Dealers, Retail	$7.5
441310	Automotive Parts and Accessories Stores	$5.0
441320	Tire Dealers	$5.0
	Subsector 442—Furniture and Home Furnishings Stores	
442110	Furniture Stores	$5.0
442210	Floor Covering Stores	$5.0
442291	Window Treatment Stores	$5.0
442299	All Other Home Furnishings Stores	$5.0
	Subsector 443—Electronics and Appliance Stores	
443111	Household Appliance Stores	$6.5
443112	Radio, Television and Other Electronics Stores	$6.5
443120	Computer and Software Stores	$6.5
443130	Camera and Photographic Supplies Stores	$5.0
	Subsector 444—Building Material and Garden Equipment and Supplies Dealers	
444110	Home Centers	$5.0
444120	Paint and Wallpaper Stores	$5.0
444130	Hardware Stores	$5.0
444190	Other Building Material Dealers	$5.0
444210	Outdoor Power Equipment Stores	$5.0
444220	Nursery and Garden Centers	$5.0
	Subsector 445—Food and Beverage Stores	
445110	Supermarkets and Other Grocery (except Convenience) Stores	$20.0
445120	Convenience Stores	$20.0
445210	Meat Markets	$5.0
445220	Fish and Seafood Markets	$5.0
445230	Fruit and Vegetable Markets	$5.0
445291	Baked Goods Stores	$5.0
445292	Confectionery and Nut Stores	$5.0
445299	All Other Specialty Food Stores	$5.0
445310	Beer, Wine and Liquor Stores	$5.0
	Subsector 446—Health and Personal Care Stores	
446110	Pharmacies and Drug Stores	$5.0
446120	Cosmetics, Beauty Supplies and Perfume Stores	$5.0
446130	Optical Goods Stores	$5.0
446191	Food (Health) Supplement Stores	$5.0
446199	All Other Health and Personal Care Stores	$5.0
	Subsector 447—Gasoline Stations	
447110	Gasoline Stations with Convenience Stores	$20.0
447190	Other Gasoline Stations	$6.5
	Subsector 448—Clothing and Clothing Accessories Stores	
448110	Men's Clothing Stores	$6.5
448120	Women's Clothing Stores	$6.5
448130	Children's and Infants' Clothing Stores	$5.0
448140	Family Clothing Stores	$6.5
448150	Clothing Accessories Stores	$5.0
448190	Other Clothing Stores	$5.0
448210	Shoe Stores	$6.5
448310	Jewelry Stores	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
448320	Luggage and Leather Goods Stores	$5.0
	Subsector 451—Sporting Good, Hobby, Book and Music Stores	
451110	Sporting Goods Stores	$5.0
451120	Hobby, Toy and Game Stores	$5.0
451130	Sewing, Needlework and Piece Goods Stores	$5.0
451140	Musical Instrument and Supplies Stores	$5.0
451211	Book Stores	$5.0
451212	News Dealers and Newsstands	$5.0
451220	Prerecorded Tape, Compact Disc and Record Stores	$5.0
	Subsector 452—General Merchandise Stores	
452110	Department Stores	$20.0
452910	Warehouse Clubs and Superstores	$20.0
452990	All Other General Merchandise Stores	$8.0
	Subsector 453—Miscellaneous Store Retailers	
453110	Florists	$5.0
453210	Office Supplies and Stationery Stores	$5.0
453220	Gift, Novelty and Souvenir Stores	$5.0
453310	Used Merchandise Stores	$5.0
453910	Pet and Pet Supplies Stores	$5.0
453920	Art Dealers	$5.0
453930	Manufactured (Mobile) Home Dealers	$9.5
453991	Tobacco Stores	$5.0
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	$5.0
454110	Electronic Shopping and Mail-Order Houses	$18.5
454210	Vending Machine Operators	$5.0
454311	Heating Oil Dealers	$9.0
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	$5.0
454319	Other Fuel Dealers	$5.0
454390	Other Direct Selling Establishments	$5.0
	Sectors 48–49—Transportation	
	Subsector 481—Air Transportation	
481111	Scheduled Passenger Air Transportation	1,500
481112	Scheduled Freight Air Transportation	1,500
481211	Nonscheduled Chartered Passenger Air Transportation	1,500
EXCEPT	Offshore Marine Air Transportation Services	$20.5
481212	Nonscheduled Chartered Freight Air Transportation	1,500
EXCEPT	Except Offshore Marine Air Transportation Services	$20.5
481219	Other Nonscheduled Air Transportation	$5.0
	Subsector 482—Rail Transportation	
482111	Line-Haul Railroads	500
482112	Short Line Railroads	500
	Subsector 483—Water Transportation[15]	
483111	Deep Sea Freight Transportation	500
483112	Deep Sea Passenger Transportation	500
483113	Coastal and Great Lakes Freight Transportation	500
483114	Coastal and Great Lakes Passenger Transportation	500
483211	Inland Water Freight Transportation	500
483212	Inland Water Passenger Transportation	500
	Subsector 484—Truck Transportation	
484110	General Freight Trucking, Local	$18.5
484121	General Freight Trucking, Long-Distance, Truckload	$18.5
484122	General Freight Trucking, Long-Distance, Less Than Truckload	$18.5
484210	Used Household and Office Goods Moving	$18.5

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
484220	Specialized Freight (except Used Goods) Trucking, Local	$18.5
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	$18.5
	Subsector 485—Transit and Ground Passenger Transportation	
485111	Mixed Mode Transit Systems	$5.0
485112	Commuter Rail Systems	$5.0
485113	Bus and Other Motor Vehicle Transit Systems	$5.0
485119	Other Urban Transit Systems	$5.0
485210	Interurban and Rural Bus Transportation	$5.0
485310	Taxi Service	$5.0
485320	Limousine Service	$5.0
485410	School and Employee Bus Transportation	$5.0
485510	Charter Bus Industry	$5.0
485991	Special Needs Transportation	$5.0
485999	All Other Transit and Ground Passenger Transportation	$5.0
	Subsector 486—Pipeline Transportation	
486110	Pipeline Transportation of Crude Oil	1,500
486210	Pipeline Transportation of Natural Gas	$5.0
486910	Pipeline Transportation of Refined Petroleum Products	1,500
486990	All Other Pipeline Transportation	$25.0
	Subsector 487—Scenic and Sightseeing Transportation	
487110	Scenic and Sightseeing Transportation, Land	$5.0
487210	Scenic and Sightseeing Transportation, Water	$5.0
487990	Scenic and Sightseeing Transportation, Other	$5.0
	Subsector 488—Support Activities for Transportation	
488111	Air Traffic Control	$5.0
488119	Other Airport Operations	$5.0
488190	Other Support Activities for Air Transportation	$5.0
488210	Support Activities for Rail Transportation	$5.0
488310	Port and Harbor Operations	$18.5
488320	Marine Cargo Handling	$18.5
488330	Navigational Services to Shipping	$5.0
488390	Other Support Activities for Water Transportation	$5.0
488410	Motor Vehicle Towing	$5.0
488490	Other Support Activities for Road Transportation	$5.0
488510	Freight Transportation Arrangement	$18.5
488991	Packing and Crating	$18.5
488999	All Other Support Activities for Transportation	$5.0
	Subsector 491—Postal Service	
491110	Postal Service	$5.0
	Subsector 492—Couriers and Messengers	
492110	Couriers	1,500
492210	Local Messengers and Local Delivery	$18.5
	Subsector 493—Warehousing and Storage	
493110	General Warehousing and Storage	$18.5
493120	Refrigerated Warehousing and Storage	$18.5
493130	Farm Product Warehousing and Storage	$18.5
493190	Other Warehousing and Storage	$18.5
	Sector 51—Information	
	Subsector 511—Publishing Industries	
511110	Newspaper Publishers	500
511120	Periodical Publishers	500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
511130	Book Publishers	500
511140	Database and Directory Publishers	500
511191	Greeting Card Publishers	500
511199	All Other Publishers	500
511210	Software Publishers	$18.0
	Subsector 512—Motion Picture and Sound Recording Industries	
512110	Motion Picture and Video Production	$21.5
512120	Motion Picture and Video Distribution	$21.5
512131	Motion Picture Theaters (except Drive-Ins)	$5.0
512132	Drive-In Motion Picture Theaters	$5.0
512191	Teleproduction and Other Post-Production Services	$21.5
512199	Other Motion Picture and Video Industries	$5.0
512210	Record Production	$5.0
512220	Integrated Record Production/Distribution	750
512230	Music Publishers	500
512240	Sound Recording Studios	$5.0
512290	Other Sound Recording Industries	$5.0
	Subsector 513—Broadcasting and Telecommunications	
513111	Radio Networks	$5.0
513112	Radio Stations	$5.0
513120	Television Broadcasting	$10.5
513210	Cable Networks	$11.0
513220	Cable and Other Program Distribution	$11 0
513310	Wired Telecommunications Carriers	1,500
513321	Paging	1,500
513322	Cellular and Other Wireless Telecommunications	1,500
513330	Telecommunications Resellers	1,500
513340	Satellite Telecommunications	$11.0
513390	Other Telecommunications	$11.0
	Subsector 514—Information Services and Data Processing Services	
514110	News Syndicates	$5.0
514120	Libraries and Archives	$5.0
514191	On-Line Information Services	$18.0
514199	All Other Information Services	$5.0
514210	Data Processing Services	$18.0
	Sector 52—Finance and Insurance	
	Subsector 522—Credit Intermediation and Related Activities	
522110	Commercial Banking	$100 mil in assets[8]
522120	Savings Institutions	$100 mil in assets[8]
522130	Credit Unions	$100 mil in assets[8]
522190	Other Depository Credit Intermediation	$100 mil in assets[8]
522210	Credit Card Issuing	$100 mil in assets[8]
522220	Sales Financing	$5.0
522291	Consumer Lending	$5.0
522292	Real Estate Credit	$5.0
522293	International Trade Financing	$100 mil in assets[8]
522294	Secondary Market Financing	$5.0
522298	All Other Non-Depository Credit Intermediation	$5.0
522310	Mortgage and Nonmortgage Loan Brokers	$5.0
522320	Financial Transactions Processing, Reserve, and Clearing House Activities	$5.0
522390	Other Activities Related to Credit Intermediation	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
	Subsector 523—Financial Investments and Related Activities	
523110	Investment Banking and Securities Dealing	$5.0
523120	Securities Brokerage	$5.0
523130	Commodity Contracts Dealing	$5.0
523140	Commodity Contracts Brokerage	$5.0
523210	Securities and Commodity Exchanges	$5.0
523910	Miscellaneous Intermediation	$5.0
523920	Portfolio Management	$5.0
523930	Investment Advice	$5.0
523991	Trust, Fiduciary and Custody Activities	$5.0
523999	Miscellaneous Financial Investment Activities	$5.0
	Subsector 524—Insurance Carriers and Related Activities	
524113	Direct Life Insurance Carriers	$5.0
524114	Direct Health and Medical Insurance Carriers	$5.0
524126	Direct Property and Casualty Insurance Carriers	1,500
524127	Direct Title Insurance Carriers	$5.0
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	$5.0
524130	Reinsurance Carriers	$5.0
524210	Insurance Agencies and Brokerages	$5.0
524291	Claims Adjusting	$5.0
524292	Third Party Administration of Insurance and Pension Funds	$5.0
524298	All Other Insurance Related Activities	$5.0
	Subsector 525—Funds, Trusts and Other Financial Vehicles	
525110	Pension Funds	$5.0
525120	Health and Welfare Funds	$5.0
525190	Other Insurance Funds	$5.0
525910	Open-End Investment Funds	$5.0
525920	Trusts, Estates, and Agency Accounts	$5.0
525930	Real Estate Investment Trusts	$5.0
525990	Other Financial Vehicles	$5.0
	Sector 53—Real Estate and Rental and Leasing	
	Subsector 531—Real Estate	
531110	Lessors of Residential Buildings and Dwellings	$5.0
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	$5.0
531130	Lessors of Miniwarehouses and Self Storage Units	$18.5
531190	Lessors of Other Real Estate Property	$5.0
EXCEPT	Leasing of Building Space to Federal Government by Owners	$15.0 [9]
531210	Offices of Real Estate Agents and Brokers	$1.5 [10]
531311	Residential Property Managers	$1.5
531312	Nonresidential Property Managers	$1.5
531320	Offices of Real Estate Appraisers	$1.5
531390	Other Activities Related to Real Estate	$1.5
	Subsector 532—Rental and Leasing Services	
532111	Passenger Car Rental	$18.5
532112	Passenger Car Leasing	$18.5
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	$18.5
532210	Consumer Electronics and Appliances Rental	$5.0
532220	Formal Wear and Costume Rental	$5.0
532230	Video Tape and Disc Rental	$5.0
532291	Home Health Equipment Rental	$5.0
532292	Recreational Goods Rental	$5.0
532299	All Other Consumer Goods Rental	$5.0
532310	General Rental Centers	$5.0
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	$5.0
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	$5.0
532420	Office Machinery and Equipment Rental and Leasing	$18.0
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
	Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	$5.0
	Sector 54—Professional, Scientific and Technical Services	
	Subsector 541—Professional, Scientific and Technical Services	
541110	Offices of Lawyers	$5.0
541191	Title Abstract and Settlement Offices	$5.0
541199	All Other Legal Services	$5.0
541211	Offices of Certified Public Accountants	$6.0
541213	Tax Preparation Services	$5.0
541214	Payroll Services	$6.0
541219	Other Accounting Services	$6.0
541310	Architectural Services	$4.0
541320	Landscape Architectural Services	$5.0
541330	Engineering Services	$4.0
EXCEPT	Military and Aerospace Equipment and Military Weapons	$20.0
EXCEPT	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	$20.0
EXCEPT	Marine Engineering and Naval Architecture	$13.5
541340	Drafting Services	$5.0
EXCEPT	Map Drafting	$4.0
541350	Building Inspection Services	$5.0
541360	Geophysical Surveying and Mapping Services	$4.0
541370	Surveying and Mapping (except Geophysical) Services	$4.0
EXCEPT	Mapmaking	$4.0
541380	Testing Laboratories	$5.0
541410	Interior Design Services	$5.0
541420	Industrial Design Services	$5.0
541430	Graphic Design Services	$5.0
541490	Other Specialized Design Services	$5.0
541511	Custom Computer Programming Services	$18.0
541512	Computer Systems Design Services	$18.0
541513	Computer Facilities Management Services	$18.0
541519	Other Computer Related Services	$18.0
541611	Administrative Management and General Management Consulting Services	$5.0
541612	Human Resources and Executive Search Consulting Services	$5.0
541613	Marketing Consulting Services	$5.0
541614	Process, Physical Distribution and Logistics Consulting Services	$5.0
541618	Other Management Consulting Services	$5.0
541620	Environmental Consulting Services	$5.0
541690	Other Scientific and Technical Consulting Services	$5.0
541710	Research and Development in the Physical, Engineering, and Life Sciences	500 [11]
EXCEPT	Aircraft	1,500
EXCEPT	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts	1,000
EXCEPT	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts	1,000
541720	Research and Development in the Social Sciences and Humanities	$5.0
541810	Advertising Agencies	$5.0 [10]
541820	Public Relations Agencies	$5.0
541830	Media Buying Agencies	$5.0
541840	Media Representatives	$5.0
541850	Display Advertising	$5.0
541860	Direct Mail Advertising	$5.0
541870	Advertising Material Distribution Services	$5.0
541890	Other Services Related to Advertising	$5.0
541910	Marketing Research and Public Opinion Polling	$5.0
541921	Photography Studios, Portrait	$5.0
541922	Commercial Photography	$5.0
541930	Translation and Interpretation Services	$5.0
541940	Veterinary Services	$5.0
541990	All Other Professional, Scientific and Technical Services	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
	Sector 55—Management of Companies and Enterprises	
	Subsector 551—Management of Companies and Enterprises	
551111	Offices of Bank Holding Companies	$5.0
551112	Offices of Other Holding Companies	$5.0
	Sector 56—Administrative and Support, Waste Management and Remediation Services	
	Subsector 561—Administrative and Support Services	
561110	Office Administrative Services	$5.0
561210	Facilities Support Services	$5.0 [12]
EXCEPT	Base Maintenance	$20.0 [13]
561310	Employment Placement Agencies	$5.0
561320	Temporary Help Services	$10.0
561330	Employee Leasing Services	$10.0
561410	Document Preparation Services	$5.0
561421	Telephone Answering Services	$5.0
561422	Telemarketing Bureaus	$5.0
561431	Private Mail Centers	$5.0
561439	Other Business Service Centers (including Copy Shops)	$5.0
561440	Collection Agencies	$5.0
561450	Credit Bureaus	$5.0
561491	Repossession Services	$5.0
561492	Court Reporting and Stenotype Services	$5.0
561499	All Other Business Support Services	$5.0
561510	Travel Agencies	$1.0 [10]
561520	Tour Operators	$5.0
561591	Convention and Visitors Bureaus	$5.0
561599	All Other Travel Arrangement and Reservation Services	$5.0
561611	Investigation Services	$9.0
561612	Security Guards and Patrol Services	$9.0
561613	Armored Car Services	$9.0
561621	Security Systems Services (except Locksmiths)	$9.0
561622	Locksmiths	$5.0
561710	Exterminating and Pest Control Services	$5.0
561720	Janitorial Services	$12.0
561730	Landscaping Services	$5.0
561740	Carpet and Upholstery Cleaning Services	$3.5
561790	Other Services to Buildings and Dwellings	$5.0
561910	Packaging and Labeling Services	$5.0
561920	Convention and Trade Show Organizers	$5.0 [10]
561990	All Other Support Services	$5.0
	Subsector 562—Waste Management and Remediation Services	
562111	Solid Waste Collection	$10.0
562112	Hazardous Waste Collection	$10.0
562119	Other Waste Collection	$10.0
562211	Hazardous Waste Treatment and Disposal	$10.0
562212	Solid Waste Landfill	$10.0
562213	Solid Waste Combustors and Incinerators	$10.0
562219	Other Nonhazardous Waste Treatment and Disposal	$10.0
562910	Remediation Services	$11.5
EXCEPT	Environmental Remediation Services	500 [14]
562920	Materials Recovery Facilities	$10.0
562991	Septic Tank and Related Services	$5.0
562998	All Other Miscellaneous Waste Management Services	$5.0
	Sector 61—Educational Services	
	Subsector 611—Educational Services	
611110	Elementary and Secondary Schools	$5.0
611210	Junior Colleges	$5.0
611310	Colleges, Universities and Professional Schools	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
611410	Business and Secretarial Schools	$5.0
611420	Computer Training	$5.0
611430	Professional and Management Development Training	$5.0
611511	Cosmetology and Barber Schools	$5.0
611512	Flight Training	$18.5
611513	Apprenticeship Training	$5.0
611519	Other Technical and Trade Schools	$5.0
611610	Fine Arts Schools	$5.0
611620	Sports and Recreation Instruction	$5.0
611630	Language Schools	$5.0
611691	Exam Preparation and Tutoring	$5.0
611692	Automobile Driving Schools	$5.0
611699	All Other Miscellaneous Schools and Instruction	$5.0
611710	Educational Support Services	$5.0
	Sector 62—Health Care and Social Assistance	
	Subsector 621—Ambulatory Health Care Services	
621111	Offices of Physicians (except Mental Health Specialists)	$5.0
621112	Offices of Physicians, Mental Health Specialists	$5.0
621210	Offices of Dentists	$5.0
621310	Offices of Chiropractors	$5.0
621320	Offices of Optometrists	$5.0
621330	Offices of Mental Health Practitioners (except Physicians)	$5.0
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	$5.0
621391	Offices of Podiatrists	$5.0
621399	Offices of All Other Miscellaneous Health Practitioners	$5.0
621410	Family Planning Centers	$5.0
621420	Outpatient Mental Health and Substance Abuse Centers	$5.0
621491	HMO Medical Centers	$5.0
621492	Kidney Dialysis Centers	$5.0
621493	Freestanding Ambulatory Surgical and Emergency Centers	$5.0
621498	All Other Outpatient Care Centers	$5.0
621511	Medical Laboratories	$5.0
621512	Diagnostic Imaging Centers	$5.0
621610	Home Health Care Services	$5.0
621910	Ambulance Services	$5.0
621991	Blood and Organ Banks	$5.0
621999	All Other Miscellaneous Ambulatory Health Care Services	$5.0
	Subsector 622—Hospitals	
622110	General Medical and Surgical Hospitals	$5.0
622210	Psychiatric and Substance Abuse Hospitals	$5.0
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	$5.0
	Subsector 623—Nursing and Residential Care Facilities	
623110	Nursing Care Facilities	$5.0
623210	Residential Mental Retardation Facilities	$5.0
623220	Residential Mental Health and Substance Abuse Facilities	$5.0
623311	Continuing Care Retirement Communities	$5.0
623312	Homes for the Elderly	$5.0
623990	Other Residential Care Facilities	$5.0
	Subsector 624—Social Assistance	
624110	Child and Youth Services	$5.0
624120	Services for the Elderly and Persons with Disabilities	$5.0
624190	Other Individual and Family Services	$5.0
624210	Community Food Services	$5.0
624221	Temporary Shelters	$5.0
624229	Other Community Housing Services	$5.0
624230	Emergency and Other Relief Services	$5.0
624310	Vocational Rehabilitation Services	$5.0
624410	Child Day Care Services	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
	Sector 71—Arts, Entertainment, and Recreation	
	Subsector 711—Performing Arts, Spectator Sports and Related Industries	
711110	Theater Companies and Dinner Theaters	$5.0
711120	Dance Companies	$5.0
711130	Musical Groups and Artists	$5.0
711190	Other Performing Arts Companies	$5.0
711211	Sports Teams and Clubs	$5.0
711212	Race Tracks	$5.0
711219	Other Spectator Sports	$5.0
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	$5.0
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	$5.0
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	$5.0
711510	Independent Artists, Writers, and Performers	$5.0
	Subsector 712—Museums, Historical Sites and Similar Institutions	
712110	Museums	$5.0
712120	Historical Sites	$5.0
712130	Zoos and Botanical Gardens	$5.0
712190	Nature Parks and Other Similar Institutions	$5.0
	Subsector 713—Amusement, Gambling and Recreation Industries	
713110	Amusement and Theme Parks	$5.0
713120	Amusement Arcades	$5.0
713210	Casinos (except Casino Hotels)	$5.0
713290	Other Gambling Industries	$5.0
713910	Golf Courses and Country Clubs	$5.0
713920	Skiing Facilities	$5.0
713930	Marinas	$5.0
713940	Fitness and Recreational Sports Centers	$5.0
713950	Bowling Centers	$5.0
713990	All Other Amusement and Recreation Industries	$5.0
	Sector 72—Accommodation and Food Services	
	Subsector 721—Accommodation	
721110	Hotels (except Casino Hotels) and Motels	$5.0
721120	Casino Hotels	$5.0
721191	Bed and Breakfast Inns	$5.0
721199	All Other Traveler Accommodation	$5.0
721211	RV (Recreational Vehicle) Parks and Campgrounds	$5.0
721214	Recreational and Vacation Camps (except Campgrounds)	$5.0
721310	Rooming and Boarding Houses	$5.0
	Subsector 722—Food Services and Drinking Places	
722110	Full-Service Restaurants	$5.0
722211	Limited-Service Restaurants	$5.0
722212	Cafeterias	$5.0
722213	Snack and Nonalcoholic Beverage Bars	$5.0
722310	Food Service Contractors	$15.0
722320	Caterers	$5.0
722330	Mobile Food Services	$5.0
722410	Drinking Places (Alcoholic Beverages)	$5.0
	Sector 81—Other Services	
	Subsector 811—Repair and Maintenance	
811111	General Automotive Repair	$5.0
811112	Automotive Exhaust System Repair	$5.0
811113	Automotive Transmission Repair	$5.0
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	$5.0
811121	Automotive Body, Paint and Interior Repair and Maintenance	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
811122	Automotive Glass Replacement Shops	$5.0
811191	Automotive Oil Change and Lubrication Shops	$5.0
811192	Car Washes	$5.0
811198	All Other Automotive Repair and Maintenance	$5.0
811211	Consumer Electronics Repair and Maintenance	$5.0
811212	Computer and Office Machine Repair and Maintenance	$18.0
811213	Communication Equipment Repair and Maintenance	$5.0
811219	Other Electronic and Precision Equipment Repair and Maintenance	$5.0
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	$5.0
811411	Home and Garden Equipment Repair and Maintenance	$5.0
811412	Appliance Repair and Maintenance	$5.0
811420	Reupholstery and Furniture Repair	$5.0
811430	Footwear and Leather Goods Repair	$5.0
811490	Other Personal and Household Goods Repair and Maintenance	$5.0
	Subsector 812—Personal and Laundry Services	
812111	Barber Shops	$5.0
812112	Beauty Salons	$5.0
812113	Nail Salons	$5.0
812191	Diet and Weight Reducing Centers	$5.0
812199	Other Personal Care Services	$5.0
812210	Funeral Homes and Funeral Services	$5.0
812220	Cemeteries and Crematories	$5.0
812310	Coin-Operated Laundries and Drycleaners	$5.0
812320	Drycleaning and Laundry Services (except Coin-Operated)	$3.5
812331	Linen Supply	$10.5
812332	Industrial Launderers	$10.5
812910	Pet Care (except Veterinary) Services	$5.0
812921	Photo Finishing Laboratories (except One-Hour)	$5.0
812922	One-Hour Photo Finishing	$5.0
812930	Parking Lots and Garages	$5.0
812990	All Other Personal Services	$5.0
	Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations	
813110	Religious Organizations	$5.0
813211	Grantmaking Foundations	$5.0
813212	Voluntary Health Organizations	$5.0
813219	Other Grantmaking and Giving Services	$5.0
813311	Human Rights Organizations	$5.0
813312	Environment, Conservation and Wildlife Organizations	$5.0
813319	Other Social Advocacy Organizations	$5.0
813410	Civic and Social Organizations	$5.0
813910	Business Associations	$5.0
813920	Professional Organizations	$5.0
813930	Labor Unions and Similar Labor Organizations	$5.0
813940	Political Organizations	$5.0
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)	$5.0

Footnotes

1. *NAICS codes 221111, 221112, 221113, 221119, 221121,* and *221122*—A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

2. *NAICS code 234990*—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

3. *NAICS code 311421*—For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in 3306(k) of the Internal Revenue Code, 26 U.S.C. § 3306(k).

4. *NAICS code 324110*—For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

5. *NAICS code 326211*—For Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(a) The value of tires within Census Classification codes 30111 and 30112 which

it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture,

(b) the value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and

(c) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

6. *NAICS Subsectors 333, 334, 335* and *336*—For rebuilding machinery or equipment on a factory basis, or equivalent, use the NAICS code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a "manufacturer" although the activities may be classified under a manufacturing NAICS code. Ordinary repair services or preservation are not considered rebuilding.

7. *NAICS code 336413*—Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under NAICS code 336413.

8. *NAICS Codes 522110, 522120, 522130, 522190, 522210* and *522930*—A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. "Assets" for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

9. *NAICS code 531190*—Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $15.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

10. *NAICS codes 531210, 541810, 561510* and *561920*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

11. *NAICS code 541710*—For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(a) "Research and Development" means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(b) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. *See* § 121.701 of these regulations.

(c) "Research and Development" for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

12. *NAICS code 561210*—Facilities Management, a component of NAICS 561210, includes establishments, not classified elsewhere, which provide overall management and personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to secretarial services, typists, word processing, maintaining files and/or libraries, telephone answering, switchboard operation, reproduction or mimeograph service, mailing service, writers, bookkeeping, financial or business management, public relations, conference planning, minor office equipment maintenance and repair, use of information systems (not programming), word processing, travel arrangements, maintaining files and/or libraries.

13. *NAICS code 235990 (All Other Special Trade Contractors) and NAICS code 561210 (Facilities Support Services)*—Base Maintenance:

(a) If one of the activities of base maintenance, as defined in paragraph (b) (below in this endnote) can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(b) "Base Maintenance" requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate NAICS code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as "Base Maintenance."

14. *NAICS 562910*—Environmental Remediation Services:

(a) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (*e.g.*, engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

15. *Subsector 483—Water Transportation—Offshore Marine Services:* The applicable size standard shall be $20.5 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

Dated: July 12, 2000.

Gary M. Jackson,

Assistant Administrator for Size Standards.

[FR Doc. 00–18439 Filed 9–1–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–32]

Amendment of Class D Airspace; Cocoa Patrick AFB, FL, and Class E5 Airspace: Melbourne, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes a technical amendment to the Class D Airspace description at Cocoa Patrick AFB, FL, and the Class E5 Airspace at Melbourne, FL, by changing the name from the

Melbourne Regional to the Melbourne International Airport.

EFFECTIVE DATE: 0901 UTC, November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

The name of the Melbourne Regional Airport, FL, has been changed to the Melbourne International Airport. Therefore, the descriptions of the Class D airspace at Cocoa Patrick AFB, FL, and the Class E5 airspace at Melbourne, FL, must be amended to reflect this change. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action has no impact on the users of the airspace in the vicinity of the Cocoa Patrick AFB and the Melbourne International Airports, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class D airspace descriptions at Cocoa Patrick AFB, FL, and the Class E4 airspace description at Melbourne, FL. Class D airspace designations and Class E5 airspace designations are published in paragraph 5000 and paragraph 6005, respectively, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, incorporated by reference in 14 CFR 71.1. The airspace designations in this action will appear subsequently in this order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Cocoa Patrick AFB, FL [Revised]

Cocoa, Patrick Air Force Base, FL
(Lat 28°14′22″N, long 80°36′27″W)
Melbourne International Airport
(Lat. 28°06′10″N, long. 80°38′45″W)
That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.3-mile radius of Patrick AFB; excluding the portion south of a line connecting the 2 point of intersection within a 4.3-mile radius circle centered on Melbourne International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airpoft/Facility Directory.

* * * * *

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

* * * * *

ASO FL E5 Melbourne, FL [Revised]

Melbourne International Airport, FL
(Lat 28°06′10″N, long. 80°38′45″W)
Patrick AFB
(Lat. 28°14′22″N, long. 80°36′27″W)
That airspace extending upward from 700 feet above the surface within 6.8 radius of the Melbourne International Airport and within a 7-mile radius of Patrick AFB.

* * * * *

Issued in College Park, Georgia, on August 10, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–21817 Filed 9–1–00; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 146

Privacy Act of 1974; Implementation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rule to require biennial rather than annual publication of the agency's Privacy Act notice of the existence and character of each of its systems of records to conform to OMB requirements.

DATES: Effective on September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Stacy Dean Yochum, Counsel to the Executive Director, (202) 418–5157, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, syochum@cftc.gov.

SUPPLEMENTARY INFORMATION: In 1996, OMB incorporated guidance to agencies on implementing the reporting and publication requirements of the Privacy Act into Appendix I to OMB Circular A–130 (61 FR 6428, February 20, 1996). OMB revised Appendix 1, changing the annual requirement to review recordkeeping practices, training, violations and notices under the Privacy Act to a biennial review. To conform the review and publication of its system of records to OMB requirements, the Commission is amending § 146.11(a) to require biennial rather than annual publication of the Commission's systems of records under the Privacy Act.

Administrative Procedure Act

The Commission has determined that the Administrative Procedure Act, 5 U.S.C. 553, does not require notice of proposed rulemaking and an opportunity for public participation in connection with this amendment. In this regard, the Commission notes that such notice and opportunity for comment is unnecessary because this amendment is related solely to agency organization, procedure and practice and conforms the Commission rules to earlier amendments to the Privacy Act. Accordingly, the Commission finds

good cause to make this amendment effective immediately upon publication in the **Federal Register**. 5 U.S.C. 553(b)(B).

List of Subjects in 17 CFR Part 146

Privacy; Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, in particular, section 2(a)(11), the Commission amends Chapter I of Title 17, part 146 of the Code of Federal Regulations as follows:

PART 146—RECORDS MAINTAINED ON INDIVIDUALS

1. The authority for Part 146 is revised to read as follows:

Authority: 88 Stat. 1896 (5 U.S.C. 552a), as amended; 88 Stat. 1389 (7 U.S.C. 4a(j)).

2. Revise § 146.11, paragraph (a), introductory text, to read as follows:

§ 146.11 Public notice of records system.

(a) The Commission will publish in the **Federal Register** at least biennially a notice of the existence and character of each of its systems of records, which notice shall include—

* * * * *

Issued in Washington, DC on August 29, 2000, by the Commission.

Jean Webb,

Secretary of the Commission.

[FR Doc. 00–22557 Filed 9–1–00; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–43217; File No. S7–29–99]

RIN 3235–AH85

Unlisted Trading Privileges

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending Rule 12f–2 under the Securities Exchange Act of 1934 ("Exchange Act"), which governs unlisted trading privileges ("UTP") in listed initial public offerings ("IPOs"). Under the amendment, a national securities exchange extending UTP to an IPO security listed on another exchange will no longer be required to wait until the day after trading has commenced on the listing exchange to allow trading in that security. Instead, a national securities exchange will be permitted to begin trading an IPO issue immediately after the first trade in the security is reported by the listing exchange to the Consolidated Tape.

EFFECTIVE DATE: This final rule is effective November 6, 2000.

FOR FURTHER INFORMATION CONTACT: Ira Brandriss, Attorney, at (202) 942–0148, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

Section 12(f) of the Exchange Act [1] governs when a national securities exchange may extend UTP to a security, *i.e.*, allow trading in a security that is not listed and registered on that exchange.[2] The UTP Act of 1994 ("UTP Act")[3] substantially amended Section 12(f). Prior to that time, exchanges had to apply to the Commission for approval before extending UTP to a particular security. The UTP Act removed the application, notice, and Commission approval process from Section 12(f) (except in cases of Commission suspension of UTP in a particular security on an exchange). Accordingly, under Section 12(f) of the Exchange Act, exchanges may immediately extend UTP to a security listed on another exchange unless it is a listed IPO security.[4] For listed IPO securities, Rule 12f–2 of the Exchange Act requires exchanges to wait one full day before they can extend UTP to such securities.

On December 9, 1999, the Commission proposed for comment an amendment to Rule 12f–2 under the Exchange Act that would eliminate the one-day waiting period and permit a national securities exchange to extend UTP to an IPO security immediately after the first trade in the IPO security on the listing exchange is reported to the Consolidated Tape.[5]

A. Current Rule 12f–2

The UTP Act established a temporary two-day waiting period for extending UTP to an IPO security, but allowed the Commission to adopt a rule providing for a shorter waiting period.[6] On April 21, 1995, the Commission adopted Rule 12f–2 under the Exchange Act to provide for a shorter waiting period. The final rule differed from the original proposed rule, which would have allowed a UTP exchange to trade a listed IPO as soon as the first trade on the listing exchange was reported to the Consolidated Tape. The final rule instead established a one-day trading delay for extending UTP to listed IPOs.[7]

In arriving at this position in 1995, the Commission acknowledged the substantial volume of trading that occurs on the initial trading days of IPOs. As a general matter, the Commission agreed with the comments of the regional exchanges that early UTP in IPO securities would enhance the ability of multiple markets to compete for this volume. However, in response to concerns raised by the NYSE and two underwriting firms that IPO pricing could be at risk if there were no opportunity for early centralized trading, the Commission decided to require the one-day waiting period. In making this determination, the Commission noted the possibility that virtually immediate UTP in IPO securities could complicate the pricing and orderly distribution of IPO securities by increasing the risk of price volatility as the securities are distributed to the public. Another significant factor in the Commission's decision to adopt a one-day trading delay in 1995 was the fact that insufficient data was available with

[1] 15 U.S.C. 78*l*(f).

[2] Section 12(a) generally prohibits trading on an exchange of any security that is not registered (listed) on that exchange. Section 12(f) excludes from this restriction securities traded pursuant to UTP that are registered on another national securities exchange. When an exchange "extends UTP" to a security, the exchange allows its members to trade the security as if it were listed on the exchange. Over-the-counter ("OTC") dealers are not subject to the Section 12(a) registration requirement because they do not transact business on an exchange.

[3] Pub. L. No. 103–389, 108 Stat. 4081 (1994).

[4] Section 12(f)(1)(B), read jointly with Section12(f)(1)(A)(ii), as amended, provides this exception for listed IPO securities. In defining securities that fall within the exception, subparagraphs 12(f)(1)(G)(i) and (ii) provide:

(i) a security is the subject of an initial public offering if—

(I) the offering of the subject security is registered under the Securities Act of 1933; and

(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of Section 13 or 15(d) of this title; and

(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

[5] Exchange Act Release No. 42209 (Dec. 9, 1999), 64 FR 69975 (Dec. 15, 1999) ("Proposing Release"). Commission staff also issued a no-action letter to several regional exchanges narrowing the scope of transactions that should be considered IPOs for purposes of Rule 12f–2. *See* note 32, *infra*.

[6] While providing temporarily for a two-day waiting period, the Act required the Commission to prescribe, by rule or regulation within 180 days of its enactment, the duration of the interval, if any, that the Commission would determine to be "necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest" or otherwise in furtherance of the purposes of the Act.

[7] *See* Exchange Act Release No. 35637 (April 21, 1995), 60 FR 20891 (April 28, 1995).

which to assess the potential impact of immediate IPO trading in multiple markets.

The Commission stated at the time, however, that it would continue to monitor the trading of IPOs, and that it would be willing to consider revisiting the question of the appropriate waiting period for extending UTP to listed IPO securities after experience had been gained with the amended rules.[8]

B. The 1998 Study

In August 1998, the Chicago Stock Exchange ("CHX"), the Cincinnati Stock Exchange ("CSE"), and the Pacific Exchange ("PCX") presented to the Commission for review a new study ("1998 Study") examining the effects of immediate multiple trading of IPO securities.[9] The study was conducted at the request of the CHX in response to the Commission's 1995 indication that it would be open to reconsidering the issue when new data became available.

The study comprised two sets of inquiries. Each compared a group of newly issued securities that were permitted to trade immediately on more than one exchange, with a group of IPO securities that were similar in type but that were subject to the one-day trading delay. The study examined whether bid-ask spreads and intraday price volatility were greater for the IPOs that were dually or multiply traded than for the IPOs that were not, compiling data from the first five days of trading for each of the securities.

Specifically, the first analysis compared a group of nine dually listed IPOs and six spin-offs [10] that traded on more than one exchange [11] with a similar group of IPO securities and spin-offs that were not dually or multiply listed. The two groups of offerings were issued during the same general time period,[12] and were similar in terms of the industry of the issuer and the amount of proceeds from the offering. Because an IPO as defined under the Exchange Act includes both traditional IPOs and spin-offs, the study included both in its analysis. The sampling for comparison was small because IPOs are rarely listed on more than one exchange.

This first inquiry found that price volatility was higher on the first day of trading for both groups of IPOs and spin-offs than on any of the subsequent four days. However, the price volatility of IPOs and spin-offs traded on only one exchange was approximately 30% higher than that of the IPOs and spin-offs that were traded on at least two exchanges. In addition, in its comparison of bid-ask spreads, the study showed that there was no statistically significant difference between the two groups. Thus, the study concluded, neither an analysis of price volatility nor a survey of bid-ask spreads revealed any evidence of damage to market quality caused by immediate trading of IPOs on a second exchange.

The second analysis compared a group of securities issued by companies that underwent some type of restructuring and could be dually or multiply traded because they were not subject to the UTP prohibition, with a group of stocks that similarly were issued as a result of reorganizations but that were subject to the UTP prohibition. Although the latter group did not include securities of a private company going public for the first time, the reorganizations were considered "technical IPOs" because they met the Section 12(f) definition of an IPO for the purposes of the statutory one-day trading delay.[13] The analysis compared data between 1994 and 1997 for eleven companies that were not subject to the UTP prohibition with six companies that were.

This second inquiry found that the price volatility on the first day of trading in either group of securities was not exceptionally high. Moreover, the price volatility of new issuances that traded on more than one exchange the first day did not differ significantly from that of the technical IPOs trading on only one exchange. The study also found no significant differences in the bid-ask spreads between the technical IPOs and the comparison group that traded on more than one exchange the first day.[14]

The study concluded that there is no empirical basis for the contention that multiple exchange trading on the first day of an IPO adversely affects market quality, either by increasing price volatility or widening bid-ask spreads. In fact, the evidence indicated that listed IPOs that are not traded on more than one exchange can be more volatile than dually or multiply listed IPOs. The study further noted that the third market, which is not subject to the one-day delay, currently competes with the listing exchange in trading IPOs on the first day with no visible adverse effect.

In addition, the study contained data demonstrating that regional exchanges have been unable to attract a substantial share of first-day trading volume in IPOs even when not barred by the statute from participating. For example, in the case of the dually or multiply listed IPOs studied, the regional exchanges garnered an average of only 1.8% of the total trading volume on the first day. Although the proportion increased over the next four trading days, it still remained comparatively small. In the case of IPOs subject to the one-day trading delay, the regional exchanges accounted for no more than an average 5% of the total trading volume for days two through five. In view of the small amount of volume at issue, the study concluded that eliminating the one-day delay should not have a major impact on the market as a whole.

II. Proposed Rule Change

A. Description of Proposal

Under the proposed amendment to Rule 12f–2, a national securities exchange could extend UTP to an IPO security immediately after the first trade

[8] *Id.* at 20894.

[9] Jay Ritter, Joe B. Cordell Eminent Scholar, University of Florida, "Unlisted Trading Privileges in Listed IPOs: Analysis of the One-Day Delay," June 1998, available in Public File No. S7–29–99.

[10] In the spin-offs, the shareholders of a parent company were issued IPO shares in a subsidiary company. Spin-offs are considered to be "technical IPOs"—i.e., transactions that are not traditional initial issuances of shares to the general public in exchange for cash, but that are currently included within the definition of IPO in Section 12 of the Act.

[11] Spin-offs and IPOs that were not considered IPOs under Section 12 of the Act could be traded immediately on other exchanges.

[12] The dually or multiply listed IPOs and spin-offs examined in this section of the study began trading between 1993 and 1997. The comparison group of IPOs and spin-offs listed on only one exchange were selected from among IPOs and spin-offs that began trading between 1995 and 1997 because the one-day delay for UTP trading of such securities first went into effect in 1995. The comparison group was selected on the basis of similar industries and proceeds.

In terms of intraday price volatility (the daily standard deviation of returns), the sample group produced volatility of 5.3% while the control group had volatility of 6.89%. This difference suggests that non-dually listed IPOs tend to be 30% more volatile than dually listed IPOs. The study also showed that the bid-ask spreads for each group were similar. The bid-ask spreads for the dually listed group were a statistically insignificant 10% higher than the control group for the first day of trading and only 5% higher by the second day of trading.

[13] *See* note 4, *supra*.

[14] The second analysis compared eleven stocks of issuers that underwent some form of restructuring between May 1994 and October 1997 that were not deemed to be an IPO, with six stocks that underwent a restructuring between April 1997 and October 1997 but that were deemed to be an IPO. The sample group of technical IPOs was less volatile than the control group for four of the first five days of trading after the restructuring. The ratio of volatility of the sample group compared to the control group for the first five days of trading was: 0.96, 1.55, 0.59, 0.80 and 0.81. A ratio of 1 shows identical volatility. Likewise, the bid-ask spreads were closer for the sample group than the control group for the first five days of trading after the restructuring. The ratio of bid-ask spreads of the sample group compared to the control group for the first five days of trading was: 0.80, 0.88, 0.69, 0.81, and 0.93. Again, a ratio of 1 shows identical bid-ask spreads.

in the IPO security on the listing exchange is reported to the Consolidated Tape.

In the Proposing Release, the Commission stated that it preliminarily believed that there was little evidence that the one-day delay protects the markets and that, accordingly, there was no justification for retaining the one-day trading delay. In proposing the revision to Rule 12f–2, the Commission relied, in part, on the 1998 Study. The Commission noted that the 1998 Study, as well as the lack of any problems with reducing the waiting period from two days to one day during the preceding four years, provided support for amending the rule. The Commission also observed that the ban on first day trading puts regional exchanges at a competitive disadvantage vis-a-vis the third market, which is not subject to the one-day delay. The Proposing Release solicited comment on, among other things, the one-trade waiting period and asked commenters whether some other interval was appropriate.

B. Summary of Comments

The Commission received seven comment letters, all of which were favorable and supported the adoption of the proposed rule change.[15] Several regional exchanges commented that the one-day trading delay serves as a barrier to competition and has existed for five years with no justification.[16] These commenters all cited the 1998 Study's conclusion that dually listed IPOs were not more volatile on the first day of trading than non-dually listed IPOs as proof that the one-day waiting period is unnecessary and unjustified. In addition, the BSE noted that specialist obligations and the framework of the Intermarket Trading System work to ensure that securities are trading in a fair and orderly market.[17] The PHLX argued that no adverse effects were observed following the change from a two-day to a one-day delay, due in part to the automated execution systems used on most exchanges which provide guaranteed liquidity.[18] The regional exchanges also argued that the waiting period is unjustified because electronic communication networks ("ECNs") and the third market are not subject to the delay and have traded IPO securities immediately with no evidence of harm to the market.[19]

One commenter submitted a study completed in 1998 that examines the effects on volatility of regional exchange participation in IPOs.[20] The study compared the volatility on the second and third trading days after an IPO with regional exchange participation to the second and third trading days after an IPO without regional exchange participation.[21] While the study did not directly examine the question of a one-*day* delay as compared to a one-*trade* delay, the study did provide some evidence regarding the more general question of the benefits of regional exchange participation in trading IPO securities. The study concluded that the decrease in volatility from the first day of trading in an IPO to the second and third day was greater in 1997 with regional exchange participation than in 1993 without regional exchange participation.[22] The study indicated that regional exchange participation does not negatively impact volatility and may, in fact, make the IPO market less volatile. Based on the findings, the commenter urged the Commission to amend Rule 12f–2 to allow competition by regional exchanges on the first day of trading in a listed IPO security. NASAA also supported the amendment, noting that it would enhance investor access to all securities markets without delay and boost investor confidence.[23]

Schwab also commented in support of the amendment. Schwab argued that the current delay is an impediment to free and open competition in the listed markets, noting that it insulates the primary market from competition and precludes valuable price discovery.[24] In this context, Schwab noted that, although the willingness of firms to route order flow has improved with just a one-day waiting period, the anticompetitive effects of the waiting period still remain. Schwab also noted that the delay will hamper ECNs that choose to register as exchanges, and provides an unfair advantage to ECNs that are not regulated as exchanges.

III. Discussion

The Commission has decided to adopt the amendment to Rule 12f–2(a)[25] as proposed to allow exchanges to extend UTP to IPO securities after the first trade on the listed market is reported to the Consolidated Tape. Specifically, as amended, Rule 12f–2(a) provides that an exchange may extend UTP to a listed IPO security when at least one transaction in the subject security has been effected on the listing exchange and the transaction has been reported pursuant to an effective transaction reporting plan as defined in Rule 11Aa3–1 under the Exchange Act.[26]

The Commission believes that the current one-day trading delay provides no real benefits and actually inhibits competition among markets. The Commission's conclusions are based on recent experience, as well as the results of the 1998 Study. The 1998 Study showed no evidence that the one-day trading delay provides any tangible benefits to market quality. As discussed in the Proposing Release, the 1998 Study suggested that greater price volatility might actually exist on the first day of an IPO with the trading delay in place. The 1998 Study examined both bid-ask spreads and price volatility and was unable to determine that there was an adverse impact on market quality resulting from the trading of IPO securities in multiple markets.[27] We also note that no commenters submitted data to the contrary in response to the Commission's specific request for comments on this issue.[28]

Accordingly, the Commission sees no compelling reason to maintain a restriction that inhibits competition among the exchanges. Removing the

[15] The comment letters are in Public File No. S7–29–99, which is available for inspection in the Commission's Public Reference Room. The Commission received comment letters on behalf of the following: Universal Trading Technologies Corporation ("UTTC"), the PCX, the CHX, the Boston Stock Exchange, Inc. ("BSE"), the Philadelphia Stock Exchange, Inc. ("PHLX"), the North American Securities Administrators Association ("NASSA"), and Charles Schwab & Co., Inc. ("Schwab"). An additional comment letter, sent via e-mail, referenced File No. S7–29–99, but did not address any issues concerning the proposed rule.

[16] PCX Letter, CHX Letter, BSE Letter, PHLX Letter.

[17] BSE Letter. *See also* Schwab Letter.

[18] PHLX Letter.

[19] PCX Letter, CHX Letter, BSE Letter, PHLX Letter.

[20] UTTC Letter. A copy of the study is available in the Public Reference Room.

[21] The study examined all IPOs from 1993 (99 IPOs) and 1997 (54 IPOs) that traded greater than one million shares per day.

[22] As noted above, the notice and approval process for UTP prior to the UTP Act essentially precluded regional exchanges from trading such securities pursuant to UTP until the second or third day after an IPO.

[23] NASSA Letter.

[24] Schwab Letter.

[25] 17 CFR 240.12f–2(a).

[26] 17 CFR 240.11Aa3–1. The remaining paragraphs of Rule 12f–2, paragraphs (b) and (c), which currently define subject securities and require that the extension of UTP to an IPO security comply with all the other provisions in Section 12(f), and the rules thereunder, would remain unchanged.

[27] While the Commission recognizes that the number of IPOs studied was limited due to the low number of multiple IPO listings and the current restrictions, the Commission believes that the study's methodology is reasonable. For the definition of "IPO," *see* note 5, *supra*.

[28] In the Proposing Release, the Commission requested that commenters submit data illustrating the need to retain the current one-day waiting period or support using a different interval, including data that might include any potential negative effects on the pricing of an IPO.

one-day trade delay will enhance competition among linked markets, consistent with Section 11A(a)(1)(D) of the Exchange Act.[29] As one commenter noted, the enhanced competition in an IPO should benefit investors by providing increased opportunities for order execution.[30] The amended rule should enhance the ability of exchanges to compete for order flow in IPO securities consistent with Section 11A(a)(1)(C)(ii),[31] especially in light of the fact that over-the-counter dealers and ECNs may already trade IPO securities immediately upon effective registration with the Commission. In view of the rapidly expanding choices that investors have for trade execution, placing unnecessary restrictions on some markets in favor of others tends to hamper competition. While the listing exchange should have the benefit of listing the IPO, other markets should be permitted to provide a place for investors to trade those securities. With no evidence to the contrary justifying the one-day waiting period, the Commission believes it is time to lift this regulatory restraint.

The final rule continues to require non-listing exchanges to wait for one trade before they begin trading an IPO. None of the commentators opposed the one trade delay. The Commission believes the one trade delay is justified because the first transaction in an IPO, as disseminated on the Consolidated Tape, conveys essential information to the public concerning the price of the security set by the underwriting process. In addition, the timing of the initial trade and commencement of trading in a new issue entail significant coordination among the issuer, the listing exchange, and the underwriters of the public offering of the security. If competing exchanges were to allow their members to trade a listed IPO security before it initially traded on the listing exchange, it could be difficult to ensure that the preparation for the IPO had been completed before public trading in the security commenced.[32]

In the Proposing Release the Commission requested comment on whether changes to the consolidated quotation system would have to be made as a result of lifting the one-day waiting period, as well as whether any additional procedures would be necessary to ensure that a UTP market does not commence trading prior to the first trade. The commenters addressing these issues stated that no changes to the consolidated quotation system were necessary to comply with the one-trade delay.[33] These commenters also stated that existing procedures now in place on regional exchanges to identify IPOs will continue to be used to identify IPOs subject to the first trade restriction.

The Commission agrees that existing procedures should be adequate to identify those IPO securities subject to the one-trade delay. The Commission will continue to work with the regional exchanges to ensure that their procedures continue to appropriately identify IPO securities for purposes of the rule. Further, the Commission, at this time, has not identified any necessary changes to the consolidated quotation system that would be necessary to implement the rule.

In summary, the Commission believes it is appropriate to remove the one-day trading delay for extending UTP to IPO securities. The Commission has carefully considered all of the comments and issues. All of the data submitted supports the conclusion that the one-day trading delay is an unnecessary restraint on competition. The Commission believes that, consistent with Section 11A of the Exchange Act, reducing the trading delay will enhance competition among the markets to the benefit of all investors.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the amendment does not impose recordkeeping or information collection requirements, or other collections of information that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

V. Costs and Benefits of the Amendment

The Commission is sensitive to the costs and benefits of its regulations. To assist the Commission in its evaluation of the costs and benefits and the effect on competition, efficiency, and capital formation that may result from the amendment, commenters were requested to provide analysis and data, if possible, relating to the costs and benefits associated with the proposal. Commenters supported the proposed rule change, citing the benefits of reducing barriers to competition and opening the market for trading IPO securities to more market participants. Some commenters also said that investors would benefit from lower transaction costs caused by increased competition. None of the commenters suggested any potential costs to the proposed amendment.

The amended rule will benefit market participants by allowing UTP exchanges to compete with the listing exchange and the third market for order flow on the first day an IPO starts trading. Investors could benefit when more participants offer liquidity to the market. In addition, issuers could benefit from wider distribution of IPO securities and greater opportunities for price discovery.

In 1998 and 1999, total first day trading volume for IPOs on the NYSE that were not dually traded on the first day was about 454 million shares and 515 million shares, respectively.[34] Comparable figures for the American Stock Exchange ("Amex") were 8.9 million first day shares in 1998 and 3.9 million first day shares in 1999. Under the rule change, the exchange where such shares are listed would now be subject to competition from other national securities exchanges on the first day of trading.

The above-cited 1998 Study [35] compared IPOs listed on one exchange with dual-listed IPOs and showed that the dual-listed IPOs did not have

[29] 15 U.S.C. 78k–1(a)(1)(D).

[30] PHLX Letter.

[31] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[32] On December 9, 1999, Commission staff issued a no-action letter to the regional exchanges clarifying the definition of IPO for purposes of Rule 12f–2. The no-action letter permits the regional exchanges to begin trading securities in certain "technical IPO" transactions on the same day those securities begin trading on another exchange on which they are listed. The no-action letter identifies six examples of offerings that meet the definition of IPO under Section 12(f) of the Act, but that are not traditional, first time capital raising efforts. These examples involve offering securities to an existing class of security holders in exchange for stock they already own that has been subject to Exchange Act reporting requirements, rather than an initial offering of shares to the general public in exchange for cash.

Specifically, the examples address the following instances in which new securities are issued and offered to existing shareholders: (1) a reporting company reforms itself as a new entity to change its state of incorporation; (2) a reporting company reorganizes into a single subsidiary holding company; (3) a reporting company incorporates one of its existing divisions as a separate public company; (4) two reporting companies consolidate to form a new corporate entity, thereby becoming wholly-owned subsidiaries of the new company; (5) a reporting company becomes a wholly-owned subsidiary of a non-reporting company; and (6) a reporting company and a non-reporting company consolidate to form a new corporation, thereby becoming wholly-owned subsidiaries of the new company. See letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Paul B. O'Kelly, Executive Vice President, Market Regulation & Legal, The CHX, dated December 9, 1999. The Commission notes that the adoption of the amendments to Rule 12f–2 has no impact on the no-action letter, and the relief granted for the transactions described in the no-action letter is still in effect.

[33] PCX Letter, CHX Letter.

[34] Sources for the NYSE and Amex figures were the Center for Research in Securities Prices and Securities Industry Automation Corp.

[35] *See supra*, note 8 and accompanying text.

statistically significant differences in bid-ask spreads in the first day of trading, and that price volatility, if anything, was higher for singly-listed IPOs. This indicates that increasing competition in IPO listings will not increase costs to investors.

The Commission recognizes that there are some potential costs associated with this amendment. Listing exchanges could be impacted because they will lose a one-day trading advantage over other exchanges, but they will probably retain a large percentage of the first day trading volume in any case. The 1998 Study showed that, in a sample of dually traded stocks, regional exchanges attracted about 1.8% of the first day trading volume. This result suggests that the elimination of the one-day trading advantage will affect only a small percentage of the first day trading volume.

The NYSE reported total trading fees of $138.4 million in 1999, which on the basis of 204 billion shares traded [36] is an average of less than .1 cents per share. Although the overall effect of the proposal cannot be determined with precision, assuming a first day migration of IPO share trading of 3 percent (higher than the 1.8 percent found in the 1998 Study) and a trading fee loss of 1 cent per share (more than 10 times higher than average calculated above [37]) the trading fee loss to the NYSE for the first day would have been, at most, $154,500 (= .03 × 515 million first day shares traded × $.01/share) in 1999; and $136,200 (=.03 × 454 million first day shares traded × $.01/share) in 1998.[38]

Specialists also will be affected by the rule. The NYSE reports that in 1999 the unweighted average spread was $.22 per share, and that specialists handled about 13.1% of the volume. [39] Using the previous assumption of 3 percent first day IPO trading volume migration to other exchanges, the revenue loss to NYSE specialists would be $445,269 (= .03 × 515 million first day shares traded × .131 specialists' share × $.22 spread/share) per year. These revenue losses would likely result in comparable revenue gains to specialists on regional exchanges.

Similar assumptions for the Amex—where first day trading in IPO shares was less than 2% of that on the NYSE in 1998, and less than 1% in 1999—would yield much smaller figures.

Finally, the Commission does not anticipate any direct or indirect costs to U.S. investors or other market participants because the rule imposes no recordkeeping or compliance burdens.

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act [40] requires the Commission, when adopting or amending rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and refrain from adopting a rule that would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Moreover, Section 3(f) of the Exchange Act,[41] as amended by the National Securities Markets Improvement Act of 1996,[42] provides that whenever the Commission is engaged in a rulemaking and is required to determine whether an action is necessary or appropriate in the public interest, the Commission must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In the Proposing Release, the Commission solicited comment on the effects of the proposed amendment to Rule 12f–2 on competition, efficiency and capital formation as cited in Sections 3(f) and 23(a)(2). Six of the seven comment letters received directly argued in support of the amendment because, in part, it would remove a barrier to competition. The remaining comment letter asserted that reducing the trading delay would reduce volatility in IPO trading.

The Commission has considered the amendment to Rule 12f–2 in light of the comments received and the standards cited in Sections 3(f) [43] and 23(a)(2) [44] of the Exchange Act. The Commission believes that, by permitting all exchanges to compete for IPO order flow, the amendment removes an artificial barrier to competition. Accordingly, the Commission does not believe that the amendment would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, enhancing the environment for trading IPO securities will work to benefit issuers, remove a barrier to greater efficiency in the markets, and encourage capital formation.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") is being prepared in accordance with Section 4 of the Regulatory Flexibility Act ("RFA").[45] It relates to an amendment to Rule 12f–2(a) [46] under the Exchange Act. The amendment will permit exchanges to extend UTP to an IPO security listed on another exchange after the first trade on the listing exchange is reported to the Consolidated Tape, rather than waiting one full trading day as currently required.

A. Reasons for and Objectives of the Proposed Actions

This amendment is intended to further the purposes of Section 11A(a)(1)(D) of the Exchange Act [47] by fostering efficiency, enhancing competition, increasing the amount of information available to brokers, dealers, and investors, facilitating the offsetting of investors' orders, and contributing to best execution of those orders. The amendment addresses a barrier to competition that currently operates as a restriction on trading activity. Under the current one-day trading delay, exchanges that do not list IPOs are unable to compete with ECNs and the third market for order flow. The rule change will facilitate competition among various markets for order flow consistent with Section 11A(a)(1)(C)(ii) [48] of the Exchange Act and enhance investor options for order execution.

B. Significant Issues Raised by Public Comments

No public comments were received in response to the IRFA and no comments specifically addressed that analysis. Commenters did, however, offer support for the amendment on the basis that the current one-day trading delay imposes a burden on competition. In response to the commenters and based in part on empirical evidence, the Commission has decided to adopt the rule amendment as proposed.

C. Small Entities Subject to the Rule

The amendment will directly affect the national securities exchanges, none

[36] Source: New York Stock Exchange 1999 Fact Book.

[37] Thus, the 1 cent per share figure should account for any other fees collected based on trading volume.

[38] It appears from the 1998 Study that when an IPO was dually traded on the first day, the market share of the regional exchanges on subsequent days was also higher. It is difficult to quantify this effect, however.

[39] New York Stock Exchange 1999 Fact Book.

[40] 15 U.S.C. 78w(a)(2).

[41] 15 U.S.C. 78c.

[42] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[43] 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78w(a)(2).

[45] 5 U.S.C. 604.

[46] 17 CFR 240.12f–2(a).

[47] 15 U.S.C. 78k–1(a)(1)(D).

[48] 15 U.S.C. 78k–1(a)(1)(C)(ii).

of which is a small entity. Paragraph (e) of the Rule 0–10 [49] states that the term "small business," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of § 240.11Aa3–1. Because no exchange has been exempted from the reporting requirements of § 240.11Aa3–1, there will be no impact for purposes of the RFA on small businesses.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendment does not impose any new reporting, recordkeeping, or other compliance requirements on exchanges, or entities indirectly affected by the proposal.

E. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. In connection with the proposal, the Commission considered the following alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the Rule, or any part thereof, for small entities.

The Commission believes that none of the above alternatives is applicable to the amendment. The exchanges are directly subject to the requirements of Rule 12f–2(a) and are not "small entities" because they are all national securities exchanges that do not meet the definition of small entity. Therefore, the Commission does not believe the alternatives are applicable in the present amendment.

VIII. Statutory Authority

The rule amendments in this release are being adopted pursuant to 15 U.S.C. 78 *et seq.*, particularly Sections 11A(a)(1)(C)(ii), 11A(a)(1)(D), 12(f)(1)(C), 12(f)(1)(D), and 23(a) of the Exchange Act, 15 U.S.C. 78k–1, 78*l*(f)(1)(C), 78*l*(f)(1)(D), 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission amends Part 240 of Chapter II of Title 17 of the *Code of Federal Regulations* to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. 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.

* * * * *

1. Section 240.12f–2 is amended by revising paragraph (a) to read as follows:

§ 240.12f–2 Extending unlisted trading privileges to a security that is the subject of an initial public offering.

(a) *General provision.* A national securities exchange may extend unlisted trading privileges to a subject security when at least one transaction in the subject security has been effected on the national securities exchange upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan, as defined in § 240.11Aa3–1.

* * * * *

Dated: August 29, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22591 Filed 9–1–00; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172

[T.D. 00–57]

RIN 1515–AC01

Petitions for Relief: Seizures, Penalites, and Liquidated Damages

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document revises the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. Parts 171 and 172 of the Customs Regulations are recrafted in this rule to include petition processing in seizure and unsecured penalty cases under part 171 and liquidated damages and secured penalty petition processing under part 172. The document revises the regulations to allow more flexibility and useful contact with Government officials in an effort to make the administration of penalty, liquidated damages and seizure cases more efficient. These regulations eliminate needless or redundant provisions.

EFFECTIVE DATE: October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202–927–2344.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of sections 618 and 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 and 1623), section 320 of title 46, United States Code App. (46 U.S.C. App. 320), and section 5321 of title 31, United States Code (31 U.S.C. 5321), the Secretary of the Treasury is empowered to remit forfeitures, mitigate penalties, or cancel claims arising from violation of Customs bonds upon terms and conditions that he deems appropriate. Under sections 66 and 624 of the Tariff Act of 1930, as amended (19 U.S.C. 66 and 1624), the Secretary is authorized to issue regulations necessary to carry out the provisions of the Tariff Act. Consistent with that authority, Parts 171 (relating to seizures and penalties) and 172 (relating to liquidated damages) of the Customs Regulations (19 CFR Parts 171 and 172) were promulgated to provide for the petitioning process in order to allow for the orderly remission of forfeitures, mitigation of penalties, and cancellation of claims for liquidated damages.

In a Notice of Proposed Rulemaking published in the **Federal Register** (63 FR 5329) on February 2, 1998, Customs proposed to substantially revise Parts 171 and 172 of the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases to make the proposed regulations briefer and to allow more flexibility and useful contact with government officials in an effort to administer cases in the most efficient way possible. The amendments to the regulations were also proposed to eliminate needless or redundant provisions.

Summary of Proposal

Below is a summary of the Notice of Proposed Rulemaking:

1. The scope of Parts 171 and 172 was proposed to be changed. Part 171, as proposed, related to unsecured fines and penalties and all seizure and forfeiture cases. Inasmuch as the payment of certain penalties is

[49] 17 CFR 240.0–10(e).

guaranteed by the conditions of the International Carrier Bond and, therefore, can involve demands against sureties, the provisions of Part 172 were proposed to be amended to relate to all claims for liquidated damages and penalties secured by a bond. This proposed change would guarantee that all such claims against sureties would be handled in a consistent manner.

2. The proposed regulations anticipated that electronic filing of petitions is an inevitability even though Customs does not currently have, on a nationwide basis, the capabilities to accept petitions electronically. Accordingly, the proposed regulations reflected the acceptance of electronic signatures and eliminated the requirement of duplicate copies if an electronic petition is filed.

3. The proposed regulations required that petitions for relief be signed by the petitioner, his attorney-at-law or a Customs broker, but would allow others, in certain non-commercial violations (such as passenger/baggage-line violations), to file petitions on behalf of non-English speaking claimants to property or other petitioners who have some disability that may impede the ability to file a petition. Instances have occurred where such petitions were rejected because they did not meet the signature requirements of the current regulations. A strict reading of the current regulations would bar Customs from considering those petitions. This position caused needless delay in administrative processing of cases. As proposed, the process would be opened in these situations and efficiency would be promoted by allowing, in non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition to enlist a family member or other representative to file a petition on his behalf.

4. Under the current regulations Customs may limit the petitioning period to 7 days in cases involving violations of 19 U.S.C. 1592 when the running of the statute of limitations is imminent. As Customs finds no reason to limit the 7-day petitioning period option to just cases involving violations of 19 U.S.C. 1592, it was proposed to extend the 7-day rule to all cases and clarify that it is 7 working days, rather than calendar days.

5. The regulatory section entitled "Additional evidence required with certain petitions" was proposed to be eliminated as unnecessary. The proposed new § 171.2 indicated that the claimant or petitioner must establish a petitionable interest in seized property. How that proof is presented is not a subject requiring control by regulation.

6. The current regulations provide that there is a right to make an oral presentation to seek relief from a penalty incurred for a violation of 19 U.S.C. 1592 for which proceedings commenced after December 31, 1978, and that oral presentations seeking relief for other penalties incurred may be allowed at the discretion of Customs. It was proposed to simply remove the reference to cases commenced subsequent to December 31, 1978, as that provision has become obsolete with the passage of time.

7. Title VI of the North American Free Trade Agreement Implementation Act (known commonly as the Customs Modernization Act) (Pub.L. 103–182, 107 Stat. 2057) amended the provisions of 19 U.S.C. 1595a(c) to provide for the seizure and forfeiture of stolen property. This amendment rendered current § 171.22(c) obsolete, as those provisions of the new statute are applicable to any stolen property, not only that stolen in Canada and brought into the United States. Accordingly, it was proposed to eliminate that provision.

8. Mitigation guidelines for monetary penalties assessed pursuant to 19 U.S.C. 1592 are currently published as Appendix B to Part 171 of the Regulations. Since the guidelines are now published, the provisions of § 171.23 of the regulations, making these guidelines available upon request, became obsolete and that section was proposed to be eliminated.

9. The offices of Regional Commissioner and District Director were eliminated under Customs reorganization; therefore, all references to those offices and delegations of authority to those individuals to decide petitions and supplemental petitions for relief became obsolete. In Treasury Decision 95–78 (T.D. 95–78, 60 FR 48645, September 20, 1995), Customs published an Interim Rule which amended the regulations and authorized Fines, Penalties, and Forfeitures Officers to decide petitions for relief, and certain designated Headquarters officials assigned to field locations to decide supplemental and second supplemental petitions for relief in certain cases (although the Notice of Proposed Rulemaking proposed the elimination of second supplemental petitions, as discussed later herein). T.D. 95–78 was later finalized by Treasury Decision 99–27 (T.D. 99–27, 64 FR 13673, March 22, 1999). Changes promulgated by the interim rule were reflected in the Notice of Proposed Rulemaking.

10. Consistent with the Customs reorganization, it was proposed to remove specific delegations of mitigation authority from the body of regulatory text with the intention of affording the Secretary of the Treasury and the Commissioner of Customs the opportunity to delegate authority to decide petitions and supplemental petitions to the field through delegation orders, without the necessity of amending the regulations. It was contemplated that a separate document would be published in the **Federal Register** detailing the new delegations.

11. The provisions of Part 111 were proposed to be amended to eliminate the requirement of Headquarters approval of broker penalty cases assessed in excess of $10,000.

12. Novel or complex issues often arise concerning Customs policy with regard to Customs actions or potential actions relating to seizures and forfeitures, penalties (including penalty-based demands for duty), liquidated damages or penalty assessment or mitigation in cases that are otherwise within field jurisdiction because of the value of the property or the amount of the penalty or claim for liquidated damages. In those instances, Headquarters advice may need to be sought. Accordingly, it was proposed to include a section in both Parts 171 and 172 to allow any Customs officer or an alleged violator to initiate a request for advice to be submitted to the Fines, Penalties, and Forfeitures Officer for forwarding to the Chief, Penalties Branch, Office of Regulations and Rulings. It was proposed that the Fines, Penalties, and Forfeitures Officer would retain the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in such cases.

13. Under current policy, Customs officers may accept petitions filed untimely in response to claims for liquidated damages. Those petitions can be accepted at any time prior to commencement of any sanctioning action against a bond principal or the issuance of any notice to show cause against a surety. It was proposed to permit Customs to accept late petitions in penalty cases as well, but, as articulated in guidelines published for cancellation of bond charges (*see* T.D. 94–38, 59 FR 17830, April 12, 1994), lateness in filing a petition was to be factored when considering remission or mitigation of a claim and less generous relief, if otherwise merited, was to be afforded to the petitioner who files in an untimely manner.

14. The courts have consistently held that a claim for liquidated damages is not a "charge or exaction" which is

properly the subject of a protest filed pursuant to the authority of 19 U.S.C. 1514. *See United States* versus *Toshoku America, Inc.*, 879 F.2d 815 (Fed. Cir. 1989); *Halperin Shipping Co., Inc.* v. *United States*, 14 CIT 438, 742 F. Supp. 1163 (1990). In light of these decisions, it was proposed to amend the regulations to indicate that claims for liquidated damages and decisions on petitions are not properly the subject of a protest filed pursuant to 19 U.S.C. 1514.

15. In *Trayco, Inc.* v. *United States*, 994 F.2d 832 (Fed. Cir. 1993), the Court permitted a company that had petitioned for relief, received a decision on the petition and, although unhappy with the mitigation offered, paid that mitigated amount "under protest," to file suit to recover the amount paid. The Court noted that as " * * * nothing in the statute or regulations gives notice that a party may relinquish its rights to judicial review by paying a mitigated penalty and filing a second supplemental petition, we decline to hold that Trayco is estopped where it accompanied its payment with a statement expressly reserving its rights to judicial review." *Id.* at 839. Customs proposed to amend the regulations to eliminate this regulatory gap and provide that any payment made in compliance with a mitigation decision will act as an accord and satisfaction where the paying party has elected to resolve the case through the administrative process and has waived the right to sue for a refund. It was proposed that this express statement be included in all mitigation decisions offered to petitioners in order to provide full disclosure as to their administrative or judicial rights. According to the proposal, Customs will not accept payments "under protest."

16. It was proposed to eliminate second supplemental petitions. As proposed, payment of a mitigated amount would never be necessary to receive original or appellate administrative review. If a petitioner believes the underlying penalty was incorrectly assessed or the claim improperly mitigated, he would not be required to pay and then later sue for a refund of monies paid.

17. The proposed regulations included a provision allowing the deciding Customs official to reserve the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a supplemental petition in any case if less than one year remains before the statute of limitations may be asserted as a defense to all or part of that case. Upon receipt of such a waiver, any reduced time period for acceptance of a petition would not be necessary.

18. Under current § 111.95, Customs Regulations, a final determination of $1,000 or less in response to a petition for relief in a case involving assessment of a penalty for violation of the provisions of 19 U.S.C. 1641 could not be the subject of a supplemental petition. As there is no basis to single out this particular violation as not being worthy of a supplemental petition for relief, and as Customs believes all parties should have the same administrative rights, it was proposed to remove this restriction on the filing of supplemental petitions in broker penalty cases.

19. Sections 10.39(e) and (f) of the regulations, relating to the filing of petitions in cases involving breaches of the terms and conditions of temporary importation bonds (TIBs), provide for different standards of review if there has been a default with respect to all of the articles entered under bond or if there has been a default with respect to part, but not all, of the articles entered under bond. Because this bifurcation is unnecessary, it was proposed to combine the provisions of §§ 10.39(e) and (f) to provide a single standard for review of TIB petitions without regard to whether all or part of the merchandise entered under the TIB are in breach.

20. Current § 162.48, Customs Regulations, relating to the disposition of perishable and low-value property, permits Customs, by the authority granted in section 612 of the Tariff Act of 1930, as amended (19 U.S.C. 1612), to destroy summarily low-value seized property (less than $1,000) when the costs of storing and maintaining such property are disproportionate to its value. Customs would then reimburse any successful petitioning claimant from the Treasury Forfeiture Fund. The provisions of section 667 of the Customs Modernization Act removed this $1,000 cap and permitted the summary destruction of any seized property, without regard to value, if the costs of maintaining such property were disproportionate to its value. Section 162.48 was proposed to be amended, consistent with this legislative change.

21. Finally, the provisions of Part 162 were proposed to be amended to specifically authorize Fines, Penalties, and Forfeitures Officers to accept waivers of the statute of limitations with regard to actual or potential violations arising within their respective ports. It was proposed that the Office of Regulations and Rulings would retain authority to accept waivers in established actual cases over which it has jurisdiction and a petition for relief has been filed.

Proposed conforming amendments to Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, and 162 were also set forth in the Notice of Proposed Rulemaking.

Discussion of Comments

The February 2, 1998, Notice of Proposed Rulemaking made provision for the submission of public comments on the proposed regulatory changes for consideration before adoption of those changes as a final rule. The prescribed comment period closed on April 3, 1998. A total of 18 responses to the solicitation of comments was received by Customs. The comments submitted are summarized and responded to below.

Comment

Five commenters are opposed to the combination of §§ 10.39(e) and 10.39(f). The commenters state that current § 10.39(e) provides for relief from liquidated damages involving breach of the terms and conditions of the TIB when partial exportation or destruction of such merchandise occurs. The commenters are of the view that the proposed recrafted regulation would unfairly penalize importers on entire shipments when only a small portion may not have been exported or destroyed in the prescribed manner. Section 10.39(f) currently indicates that the amount to be tendered is determined by the value of the goods involved in the breach of the bond. The commenters assert that the proposed new regulation would not do this and it is unclear as to the level of liability for the importer when a partial exportation or destruction occurs.

Customs Response

The commenters' fears are misplaced. First, the proposed amendment in no way would change the provisions of § 10.39(d)(1), which governs assessment of liquidated damages for failure to export or destroy TIB merchandise in the time period prescribed by regulation. Claims will still be assessed at two times or 110 percent of the estimated duties applicable to the entry, depending on the HTSUS provision under which entry is made. The proposed regulatory text would eliminate unnecessary differences in the authority of the Fines, Penalties, and Forfeitures Officer to act on a petition for relief with regard to those cases where all of the merchandise covered under the TIB was not exported or destroyed as opposed to those cases where partial exportation or destruction

occurred. The provisions of § 10.39(e)(1) through (e)(4), relating to the standards to be considered when canceling the claim upon payment of a lesser amount, are not being changed. Those standards will be applied to partial breaches as well as breaches involving all merchandise covered by a TIB entry. In accordance with this response, Customs is proceeding with combining § 10.39(e) and § 10.39(f) in the final regulatory text.

Comment

Numerous commenters express the view that oral presentations should be granted as a matter of right in all cases.

Customs Response

Customs does not agree that oral presentations should be granted as a matter of right in all cases, but does concede that reference to 19 U.S.C. 1593a(b)(2) regarding petitioning of penalties assessed for false drawback claims was inadvertently excluded from this proposed regulation. The provisions of 19 U.S.C. 1592(b)(2) and 19 U.S.C. 1593a(b)(2) specifically state that a person charged with a penalty thereunder shall have reasonable opportunity under 19 U.S.C. 1618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. For the most part, other statutes enforced by Customs do not provide for such an opportunity. It would be administratively burdensome to require Customs to hear oral presentations in all violations for which cases are developed. Accordingly, the regulations provide Customs with discretion to allow oral conferences in other cases. However, the final regulatory text is amended to include reference to 19 U.S.C. 1593a(b)(2).

Comment

One commenter indicates that the regulations should be amended in a manner to require Customs to act on petitions within 120 days. The commenter states that when a petition is received, not much else has to be done by Customs and there is no basis for continued delays.

Customs Response

Customs does not agree. When a petition is received, an investigation often must be undertaken in order to determine the veracity of statements made in that petition. This can be a time consuming process, particularly if information from foreign sources must be obtained. Additionally, there are instances when a claimant to seized property or a charged party asks that Customs delay a decision on a petition for relief. If Customs is required to adhere to a rigid decision schedule, it could work to the disadvantage of such a party. While Customs makes every effort to decide petitions for relief as expeditiously as possible, Customs sees no reason to amend the regulations to place a strict time frame on the processing of petitions.

Comment

A comment was received from the Food and Drug Administration (FDA), indicating its concern that the provisions of proposed §§ 172.11 and 172.12 would authorize Fines, Penalties, and Forfeitures Officers to decide petitions for relief in cases involving the failure to redeliver FDA-regulated merchandise which has been refused admission. There is a concern that the Customs officers will not have the technical expertise to make such a determination.

Customs Response

Customs appreciates FDA's concern, but notes that the provisions of 21 CFR 1.97(b), which require FDA and Customs to be in agreement with regard to the terms and conditions of cancellation of any bond charge arising from the failure to comply with FDA admissibility requirements, have not been overridden by these regulations. Fines, Penalties, and Forfeitures Officers will still be required to forward all petitions for relief in FDA cases to FDA and will follow the recommendation of FDA with regard to the disposition of those cases consistent with the regulations.

Comment

Numerous commenters object to proposed § 171.2(e), which allows Customs to reduce the time for filing a petition for relief to no less than seven working days when fewer than 180 days remain from the date of penalty notice or seizure before the statute of limitations may be available as a defense. One commenter asks that the new regulations commit Customs to making every effort to issue notices of penalty and seizure within sufficient time so as to allow importers 30 days to file petitions for relief. Another commenter claims that this provision would interfere with a surety's right to investigate and raise appropriate defenses, if any, before deciding to extend the statute of limitations. The same commenter states that the surety should receive notice at the same time the claim is made against the principal on the bond. If at least 90 days remained before expiration of the statute of limitations, the surety should receive the full 60 days to investigate the claim and file a petition. In the alternative, the commenter suggests that Customs accept limited waivers of the statute of limitations to enlarge the time remaining to the full 180-day period. Finally, another commenter states that Customs is now proposing to extend the 7-day petitioning period to other types of cases when the running of the statute of limitations is "imminent." The commenter suggests that Customs define the term "imminent."

Customs Response

Customs does not agree that this provision is onerous and should be changed. It is noted that this provision is not a newly promulgated exception from the usual 30 or 60-day time periods for the filing of petitions for relief. This provision is basically unchanged from the current regulations. Under current 19 CFR 171.12(e), Customs may shorten the petitioning period to 7 days if less than 180 days remains before the statute of limitations is to run. Because the current regulation does not distinguish between calendar or working days so as to determine the appropriate length of that 7-day period, Customs has clarified the length of this shortened petitioning period by expressly indicating that 7 working days is the minimum time period for providing a petition for relief.

Also, it should be noted that sureties have received and will continue to receive courtesy copies of notices to principals of claims for liquidated damages which are issued against any bond the sureties have written. The proposed regulations, by combining liquidated damages case processing with processing of penalties secured by bonds, insure that sureties will also receive courtesy copies of penalty notices issued against their bond principals when the sureties have written the underlying International Carrier's Bond. If anything, notification to sureties of potential liabilities has expanded.

There is no regulatory proscription against execution of waivers of the statute of limitations which would enlarge the time to 180 days from the date of issuance of the claim for liquidated damages in order to allow for the full 60-day petitioning period.

While Customs certainly aspires to avoid having to curtail the time a petitioner has to file a petition for relief and Customs attempts to issue notices of penalty, seizure or claims for liquidated damages more than 180 days prior to the running of the statute of limitations, Customs concedes that on occasion

these notices do not meet that time frame. While Customs continues to strive to issue notices so as to provide the claimant with full regulatory petitioning times, such notice issuance is not always possible. Customs is of the view that continuation of the current regulatory scheme provides a reasonable method to allow for maximum administrative petitioning rights.

Further, the proposed regulatory text in § 171.2(e) includes language indicating that if a penalty is assessed or a seizure is made and less than 180 days remain from the date of the penalty notice or seizure before the statute of limitations is available as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. For the sake of clarity, Customs is removing the phrase "from the date of penalty notice or seizure" and is rephrasing the final regulatory text to indicate that the Fines, Penalties, and Forfeitures Officer may specify in the seizure or penalty notice a reasonable period of time for the filing of a petition for relief.

Finally, the regulatory text does not include any reference to the running of the statute of limitations being "imminent." Rather, a time certain of 180 days prior to the availability of the statute as an affirmative defense is referenced. Customs sees no reason to define the term "imminent" because it does not appear in the proposed regulation.

Comment

Many commenters disagree with the proposal to eliminate second supplemental petitions. They consistently claim that second supplemental petitions serve an important function and provide a necessary level of review. One commenter notes that the second supplemental petition is particularly useful in vessel repair cases established for violation of 19 U.S.C. 1466, particularly when a protest decision on the vessel entry liquidation reduces the loss of revenue to be collected on that entry. As currently configured in 19 CFR 171.33(c)(2)(ii), the regulation allows for the filing of a second supplemental petition within 30 days following an administrative or judicial decision with respect to entries involved in the penalty case which reduces the loss of duties upon which the mitigated penalty amount was based. The second supplemental petition affords the petitioner the ability to obtain the proper mitigated penalty amount. In vessel repair cases, the duty involved can often be substantial. That same commenter goes on to argue that elimination of the second supplemental petition would substantially reduce the petitioner's ability to receive full mitigation. The only avenue for further relief would be litigation, the least desirable alternative.

Customs Response

Customs agrees that an avenue for relief should be available to the party who must rely on an administrative or judicial decision which would reduce the amount of administrative penalties; however, the second supplemental petition, which requires full payment from that party prior to Customs acceptance of that second supplemental petition, places a substantial burden on that party when those same large sums are at issue.

Accordingly, in acknowledgment of the need to provide an administrative alternative to the party who would be affected by an administrative or judicial decision, Customs has decided to amend the provisions of proposed §§ 171.61 and 172.41 (relating to the filing of supplemental petitions) to allow for the filing of a supplemental petition within 60 days from an administrative or judicial decision with respect to entries involved in the penalty case which reduces the loss of duties upon which the mitigated penalty amount was based. This amendment would save petitioning rights for the party who awaits another administrative decision that would influence the outcome of its penalty case.

Notwithstanding the above, Customs remains of the view that the second supplemental petition should be eliminated. Currently, the petitioner is afforded up to two years after a decision on a supplemental petition for relief to file a second supplemental petition. That is simply too long a time to keep administrative matters open. Additionally, the *Trayco* court viewed with disfavor the regulatory requirement of payment in compliance with the decision on the supplemental petition for relief in order to obtain the third level of administrative review. Rather than prolong the process, Customs is of the view that two administrative opportunities provide sufficient levels of review for the charged party or claimant to seized property.

Comment

Numerous comments were received with regard to Customs' proposal to allow any Customs officer or alleged violator to initiate a request for Headquarters advice with a Fines, Penalties, and Forfeitures Officer for forwarding to the Chief, Penalties Branch, Office of Regulations and Rulings. This advice request, as proposed, must relate to any novel or complex issue arising concerning Customs policy regarding Customs actions or potential actions relating to seizures and forfeitures, penalties (including penalty-based demands for duty), liquidated damages or case assessment or mitigation in cases that are otherwise within field jurisdiction because of the value of the property or the amount of the penalty or claim for liquidated damages. The Fines, Penalties, and Forfeitures Officer would retain authority to refuse to forward any request that fails to raise a qualifying issue and to seek advice from the appropriate Associate or Assistant Chief Counsel in such cases.

Reaction to this proposed regulation ranged from strongly negative (with one commenter stating "the field office is typically the source of the problem which the petitioner would like Headquarters to review, and therefore is far too interested and biased a party to determine whether that review is warranted"; and referring to this as "asking the fox to guard the chicken coop") to positively disposed, but cautious. The latter group seeks the establishment of criteria for the referral to Headquarters, seeing those criteria as being key to the effectiveness of the change. Several commenters suggest that the regulations provide for a right of appeal from the decision of the Fines, Penalties, and Forfeitures Officer to refuse referral.

Customs Response

Customs is of the view that sufficient safeguards and guarantees have been written into the regulation to allay the fears that deserving claimants will be barred from being heard. Concomitantly, the regulation is drawn narrowly enough to prevent frivolous claims that Headquarters review is required. The Fines, Penalties, and Forfeitures Officer is and must be afforded discretion to refuse to forward a request that fails to raise a qualifying issue, but he or she is also encouraged to seek legal advice from Associate or Assistant Chief Counsel as to whether a request does raise such a qualifying issue. The regulation was not designed to permit Headquarters review of all petitions, nor is it necessary to provide for appeal rights of a decision to disallow Headquarters review of novel and complex issues. That would impose yet another administrative layer to decide whether a claim should be heard at a

Headquarters level. That would clearly not promote administrative efficiency.

Customs is also of the view that establishment in regulation of criteria to be followed for the granting of Headquarters review would be difficult. It is impossible to predict what issues might arise from Customs policies. Unlike Applications for Further Review in the protest process, mitigation decisions are acts of administrative discretion and do not have precedential value. Facts underlying the issuance of claims or the making of seizures can be very different yet involve the same statutory violation. Decisions are made within published guideline ranges. To allow further review of any act of administrative discretion would involve Headquarters review of every decision. This is not the intent of this regulatory change.

Comment

Numerous commenters express objection to the proposal to eliminate Customs Headquarters authorization of broker penalties when such penalties are proposed for issuance in amounts in excess of $10,000.

Customs Response

When the Tariff and Trade Act of 1984 (Pub.L. 98–573) amended 19 U.S.C. 1641 to provide for civil monetary penalties against brokers, Customs agreed with the brokerage community that the novelty of these penalties was such that Headquarters review of all proposed 19 U.S.C. 1641 penalties was necessary so as to provide guidance to the field and to identify those situations for which a penalty response was appropriate. In Treasury Decision 86–161 (T.D. 86–161, 51 FR 30345, August 26, 1986; corrected 51 FR 31760, September 5, 1986), Customs first published broker penalty assessment and mitigation guidelines by adding Appendix C to Part 171 to provide further guidance for field offices. A revision to Appendix C was published in Treasury Decision 90–20 (T.D. 90–20, 55 FR 10056, March 19, 1990.) After approximately five years of experience in assessing these penalties, Customs published Treasury Decision 91–77 (T.D. 91–77, 56 FR 46115, September 10, 1991), in which field offices were empowered to issue broker penalties without Headquarters review when the amount to be assessed did not exceed $10,000. At that point, it was believed that the agency had sufficient experience with these penalties that Headquarters review was only necessary when the most serious assessments were contemplated.

Customs is now of the view that Headquarters review of broker penalty cases is unnecessary. Headquarters does not by regulation review the issuance of any other type of penalty. There is no compelling reason to continue to approve broker penalties of any size. The Penalties Branch, Office of Regulations and Rulings, will review and decide supplemental petitions for relief in broker penalty cases when the amount assessed exceeds $10,000, so Headquarters review will still be afforded in the more serious cases.

Comment

Some commenters indicate that it is unnecessary for Customs, by regulation, to require proof of representation. One commenter suggests that standards of local bar associations provide adequate protections.

Customs Response

As Customs brokers may also represent parties that have been charged with penalties or claims for liquidated damages or seek return of seized property, standards of local bar associations do not provide adequate protection. The local bar association would not have jurisdiction to discipline a Customs broker. Because Customs concedes that not every petition for relief need be accompanied by a statement of representation, the proposed regulation left this requirement to the discretion of the Fines, Penalties, and Forfeitures Officer. Accordingly, no change is made to the proposed regulations based on these comments.

Comment

One commenter is extremely concerned about unauthorized filing of petitions and believes that petitions should be signed only by an attorney or a Customs broker. The commenter suggests that proposed § 171.1(b), which would allow a corporation's petition to be signed by "an officer or responsible supervisory official or a representative of the corporation," would allow anyone claiming to be a representative to sign a petition. In the view of the commenter, virtually every significant commercial penalty claim involves a corporation and the proposed regulatory text would eliminate any and all restrictions with regard to individuals signing on behalf of corporations.

Customs Response

Customs disagrees with the commenter that signing of petitions by corporations should be limited to attorneys or Customs brokers because a principal can always act on its own behalf. Customs believes that when a corporation is the petitioner, it clearly can have a petition signed by an officer. Customs also believes that a large corporation may not want to require that a petition be signed by an officer in all cases and may want the flexibility to allow a responsible individual in a supervisory position or other responsible employee (such as a claims examiner) to be able to act on its behalf. Customs does agree, however, with the commenter that the proposed language may be too broad in seeming to allow any individual claiming to be a "representative" of the corporation to sign a petition for the corporation. Because the language as proposed may be read too broadly, Customs is modifying the proposed "representative of the corporation" language in the final rule to provide that a "responsible employee representative" as well as an officer or responsible individual in a supervisory position may sign a petition for a corporation.

Comment

Proposed § 172.43 states that Customs may require a waiver of the statute of limitations as a condition precedent prior to consideration of a supplemental petition for relief if the statute will be available as a defense to all or part of a case within one year from the date of decision on an original petition for relief. One commenter suggests that this proposed language only relieves Customs from its duty to issue demands timely. It is averred that unless Customs is held accountable for issuing timely decisions on the original petition, there is no impetus for Customs to decide claims promptly.

Customs Response

Customs does not agree with this analysis. The statute of limitations may loom as a defense for many reasons, not just because Customs did not issue a demand timely. Customs seeks the statute of limitations waiver to encourage the orderly processing of the case so as to avoid litigation. It is not now, nor has it ever been, Customs policy to delay without good cause issuance of any claim. The claimant can always refuse to provide the statute of limitations waiver and the matter can be referred for commencement of a judicial action.

Comment

One commenter suggests that proposed § 172.22(b), relating to the payment of mitigation amounts acting as an accord and satisfaction, could compromise the rights of a surety in that it would force the surety to settle a

claim because, being threatened with sanction, the surety would have to choose between obtaining a preliminary injunction or protesting the payment.

Customs Response

Customs does not agree with the commenter. A surety is provided with courtesy copies of original demands on bond principals. When the bond principal either fails to respond or exhausts its administrative rights and does not comply with decisions on any petitions for relief, a demand on surety is issued and the surety is afforded all petitioning rights. Once the surety is provided with a mitigation decision, if the surety refuses to pay and has raised a justiciable issue, Customs will commence a collection action and the surety may have its day in court. Customs is not of the view that application of the principles of accord and satisfaction to any single payment in compliance with a mitigation decision is an event that will force the surety either to comply or go to court to avoid sanction. Accordingly, Customs believes that the regulation should be adopted as proposed.

Comment

Another commenter strongly opposes the provisions of proposed § 171.23. The commenter states that the government will exercise greater care when it knows that its decision may be reviewed by the courts. The commenter believes that the court will only review the question of whether a violation occurred, not the mitigation. The commenter indicates that the government should welcome rather than oppose the court's view of whether a violation occurred.

Customs Response

Customs does not intend to deny a charged party its day in court. After Customs determines that a violation has occurred and assesses and mitigates a penalty, effects a seizure and remits a forfeiture, or assesses a claim for liquidated damages and cancels the claim upon payment of a lesser amount, all in accordance with the administrative procedure, there will be no coercion to pay. If a party wishes to have its day in court it can inform Customs that it will not pay and can wait for judicial action to be commenced.

However, Customs believes that once a party agrees to pay an administratively determined mitigation, remission or cancellation amount, the party should not be permitted also to pursue the matter in the courts. This has always been Customs view—a party can choose between administrative proceedings and judicial proceedings. This view was not, however, reflected in the regulations. Section 171.23 was proposed in reaction to the court's statement in *Trayco, supra.*, that "nothing in the statute or regulations gives notice that a party may relinquish its rights to judicial review by paying a mitigated penalty." The proposed regulation, once adopted, will serve to give the notice that the court stated was missing, in that payment of a penalty will act as an accord and satisfaction and bar judicial review.

It is noted that if a party chooses to pay the mitigated penalty, forfeiture remission amount or bond claim cancellation amount, one still has the right to pursue the administrative proceeding by filing a supplemental petition for relief.

Comment

One commenter representing sureties objects to proposed § 172.13(c), which states that no action shall be taken on any petition from a principal or surety if received after issuance of a notice to show cause is issued to a surety.

Customs Response

Customs will soon be issuing procedures with regard to the nonacceptance of bonds from delinquent sureties. Those procedures include the issuance of notices to show cause. They are being formulated with considerable consultation with the surety community. At the time a notice to show cause is issued to a surety, the surety will have already received at least six notifications of the existence of the claim. Customs does not agree that failure to accept a petition at that late a juncture in the administrative proceedings will place a chilling effect on meaningful exchanges.

Comment

One commenter suggests that in proposed § 171.1(c)(4), Customs should not require proof of a petitionable interest in seized property from an importer of record. The commenter suggests that this provision be amended to allow any party who may act as importer of record to file a petition for remission of a forfeiture without additional proof of a petitionable interest in the property.

Customs Response

Customs does not agree. While Customs concedes that in the overwhelming number of cases, the importer of record will have a petitionable interest in any seized merchandise, there are situations where a Customs broker filing an entry as a nominal importer of record will have no petitionable interest in the merchandise being entered. As such, it would not be appropriate to include regulatory text that would automatically confer upon an importer of record a petitionable interest in seized property.

Comment

One commenter suggests that the provisions of proposed § 171.21 should require a written decision with regard to a petition submitted in response to an alleged violation of 19 U.S.C. 1595a.

Customs Response

Sections 19 U.S.C. 1592, 1593a and 1641 all specifically provide that a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based must be issued. Customs is of the view that the agency should not identify through rulemaking other violations for which written decisions will or will not be given as a matter of right. However, Customs endeavors to issue written decisions in response to all petitions, regardless of the underlying violation.

Customs notes that the proposed rule inadvertently omitted a reference to 19 U.S.C. 1593a in this section. The regulatory text has been amended to so include that statute in this provision.

Comment

One commenter disagrees with the certification by Customs pursuant to the Regulatory Flexibility Act that the provisions of the proposed regulatory amendments, if adopted, will not have a substantial impact on a number of small entities. The commenter states that there is no credible support for the statement that small business entities are rarely repeat violators of Customs laws and, therefore, will seldom need to avail themselves of these regulatory provisions and file petitions for relief on a regular basis. The commenter provides anecdotal evidence that it had a bond principal that was a small entity that had seven delinquent liquidated damages claims. The commenter goes on to state that common sense suggests that small companies are frequent violators of the customs laws and are substantially and directly affected by the proposed regulations.

Customs Response

Customs does not deny that some small businesses will be affected by these regulations. The statement included in the Notice of Proposed Rulemaking did not state that small companies would never be impacted, but that there would not be a significant impact on a substantial number of small

entities. Prompted by the commenter's concern, Customs, to verify its certification statement, reviewed all claims for liquidated damages (the most common sort of violation that would be incurred by a small entity) in a large port for Fiscal Year 1998. Some 830 violators were identified. Those 830 violators incurred 1,690 claims for liquidated damages, an average of two per entity. Only 34 entities incurred more than 5 claims for liquidated damages and of those 34 entities more than two-thirds were large transportation companies and retailers, clearly not small businesses. Of those 830 identified violators, (which is an unknown percentage of all businesses that deal with Customs in some form or fashion, many of whom incur no liabilities whatsoever and don't appear in any list of violators), only 11 could be identified as small businesses—slightly over one percent. In light of this sampling, Customs remains of the view that these amendments will not have a significant impact on a substantial number of small entities.

Comment

One commenter indicates that it would be opposed to the provisions of proposed § 172.33 (which permits Customs, as a condition to accepting an offer in compromise, to require that the offeror enter into any collateral agreement or post security which is deemed necessary for the protection of the interest of the United States), if such a provision is intended to extend the period in which the surety would be liable, either by request for extension of the statute of limitations or other means.

Customs Response

The commenter should be assured that Customs does not intend, through promulgation of this section, to extend the statute of limitations or to otherwise compromise any rights that a party may have to raise any defenses with regard to any claim brought against it.

Comment

One commenting surety representative indicates that Customs had recently adopted a policy whereby any mitigation offered to a bond principal (and not acted on by it) would be described in the first demand on surety, and made available to the surety as a basis for settlement. The commenter urges that the revised regulation provide that this information be included in the first demand on surety and that the surety be offered a reasonable opportunity to accept the mitigation offered. In that same vein, other commenters suggest that the proposed regulatory text of §§ 171.62(a) and 172.42(a) be amended to add the following language: "In no event can the reviewing official grant less relief than contained in the decision on the original petition for relief." It is averred that this protects petitioners from the risk of having to pay a higher penalty merely by exercising the due process right of an administrative review of the original decision.

Customs Response

Customs does not agree with either of these comments. As to the comment of the surety, Customs offers mitigation as a matter of administrative discretion. While in the vast majority of cases the mitigation offered to the bond principal will be offered to the principal's surety, Customs does not want its mitigation policies to be dictated by regulation.

The same logic applies to Customs rejection of the proposed language limiting mitigation authority when considering a supplemental petition for relief. Facts may arise that were not available when considering the original petition for relief that would call for less generous mitigation when considering a supplemental petition for relief. As a matter of policy, Customs does not grant less generous mitigation upon review of a supplemental petition for relief than was afforded on the original petition without an articulable reason for doing so. The filing of a supplemental petition for relief questioning the decision on the original petition is never, in and of itself, an adequate reason to grant less generous relief than was afforded on the original petition. A petitioner should never be penalized for the mere act of filing a supplemental petition for relief. In order to safeguard against abuses of this type, Customs affords review of supplemental petitions for relief by officials other than those deciding the original petition. Customs cannot agree to the proposed regulatory language barring the granting of less generous mitigation in all situations inasmuch as such language would interfere with the exercise of administrative discretion.

Comment

Finally, numerous commenters object to Customs elimination of specifically enumerated delegations of authority within the language of the regulations. One commenter states that the Notice of Proposed Rulemaking stated that additional authority is to be delegated to the Customs ports to render decisions on petitions and supplemental petitions. The commenter suggests that such further delegation will only magnify a problem of lack of uniformity between ports.

Customs Response

Customs notes that the Notice of Proposed Rulemaking proposed to remove specific delegations of mitigation authority from the body of the regulatory text with the intention of affording the Secretary of the Treasury and the Commissioner of Customs the opportunity to delegate authority to decide petitions and supplemental petitions through delegation orders without the necessity of amending the regulations. The Notice also stated that a separate document would be published in the **Federal Register** detailing new delegations. It is unclear how any further delegations of authority will only magnify a problem of lack of uniformity between ports, as the commenter suggests. All ports function under the same delegations. Rather than causing a lack of uniformity, those delegations promote uniformity. Accordingly, Customs disagrees with the comments and will publish this proposed regulatory text without change.

Conclusion and Other Changes

After analysis of the comments and further review of the matter, Customs has determined to adopt the amendments proposed in the Notice of Proposed Rulemaking published in the **Federal Register** (63 FR 5329) on February 2, 1998, with the changes mentioned in the comment discussion and with the following additional changes that are necessary to bring consistency to the regulations or to remove unnecessary language:

1. Customs has removed § 113.46 from the regulatory text. As Customs is not setting forth guidelines relating to cancellation of bond charges resulting from failure to produce documents in the regulations and is not directing the reader to the location of these guidelines, this language is unnecessary.

2. Customs has reviewed the last sentence of proposed § 171.3(a) and has determined that said sentence is unnecessary. Proposed § 171.3(a) discusses the arrangement of oral presentations in cases involving alleged violations of 19 U.S.C. 1592. In the current regulation, it was necessary to define when a proceeding was commenced because of the change in the underlying statute promulgated in 1978. Therefore, through the passage of time the sentence has become obsolete and has been eliminated.

3. The provisions of proposed § 171.64 contain an error. The language of the regulation indicates that the deciding official reserves the right to require a waiver as a condition

precedent before accepting a petition for relief or supplemental petition for relief in any case where the statute of limitations will be available as a defense within one year from the date of the decision on the original petition for relief. Requirement of a waiver cannot be a condition precedent to the acceptance of an original petition for relief, provided the statute will be available as a defense within one year from the date of the decision on that petition. The regulation has been amended to eliminate the reference to petitions. The regulation is now consistent with the provisions of § 172.43.

4. In reviewing the provisions of proposed § 162.81, Customs is of the view that the ministerial acts involving the processing of statute of limitations waivers are operational in nature and need not be the subject of regulation. Accordingly, that proposed section has been removed from the final document.

5. In the regulatory text of proposed §§ 171.13(a) and 172.13(a), Customs indicated that late petitions could be accepted if the deciding official, in his or her discretion, believed the efficient administration of justice would be met. Upon further review of this proposed regulation, Customs has decided that codification of the acceptance of untimely petitions in penalty, seizure and liquidated damages cases could be construed by claimants to seized property and alleged violators as bestowing a right to file a late petition. While Customs concededly, as a matter of policy, has accepted late petitions in claims for liquidated damages cases and merely afforded less generous mitigation, Customs has decided that such a decision should remain a matter of policy and should not be included in regulation. Accordingly, in the final regulatory text, proposed §§ 171.13(a) and 172.13(a) have been removed. Paragraphs (b) and (c) of proposed § 171.13 have been redesignated in the final text as paragraphs (a) and (b). Paragraphs (b) and (c) in proposed § 172.13 have been redesignated in the final text as paragraphs (a) and (b).

6. Customs has also removed proposed § 171.32 from the final regulatory text and redesignated proposed § 171.33 as § 171.32. Customs Headquarters will retain all offer acceptance authority, still subject to the approval of the General Counsel of the Treasury or his delegee, in cases administered under Part 171. The proposed regulatory text regarding authority to accept offers in cases administered under Part 172 has not been changed in the final document.

7. The proposed regulatory texts in §§ 171.1 and 172.2 did not make it clear that Customs can require that petitions and any documents submitted in support of petitions be in English or have English translations provided. Accordingly, language has been added to both of the noted regulations to clarify this requirement.

8. The proposed regulatory texts in §§ 171.14 and 172.14 have been amended to reflect the fact that Headquarters advice regarding actual duty loss tenders determined by Customs pursuant to § 162.74(c) of the Customs Regulations relating to prior disclosure and actual duty loss demands made under § 162.79b of the Customs Regulations are outside the scope of those particular regulations. The last sentence of § 162.79b will be retained. This section will continue to provide for Headquarters review of any determination of actual loss of duties in which a § 1592(d) demand has been made and there is no penalty assessment, the assessed penalty is remitted in full or the penalty amount (or mitigated penalty) has been paid.

9. The proposed regulatory text in § 10.39(e) has been amended to indicate that the Fines, Penalties, and Forfeitures Officer may cancel Temporary Importation Bond liquidated damages liability upon payment of a lesser amount in accordance with delegated authority. The proposed version of this section did not include this limiting language and apparently gave unintended full claim cancellation authority to Fines, Penalties, and Forfeiture Officers in these situations.

10. The proposed rule overlooked the provisions of § 12.8 of the Customs Regulations regarding claims for liquidated damages for failure to comply with meat inspection requirements. Customs is amending § 12.8 to conform with the provisions of Part 172.

11. In the fourth sentence of § 162.74(c) the word "demanded" is removed and replaced with the word "determined". In prior disclosure, Customs does not "demand" the actual loss of revenue. Rather, the disclosing party tenders the duty to perfect the prior disclosure.

12. Consistent with the current practice of removing unnecessary footnotes, Part 18 of the Customs Regulations has been amended by removing footnote 9 which relates to § 18.24(a).

13. On Wednesday, March 15, 2000, Customs published Treasury Decision 00–17 (T.D. 00–17) in the **Federal Register** (65 FR 13880), amending the regulations relating to Customs brokers. In that document, the provisions of 19 CFR 111.92 and 111.93 explain the process involving issuance of monetary penalties for violations of the laws and regulations relating to Customs brokers. For purposes of clarity, this document has redesignated the existing text of § 111.92 as paragraph (a) with minor changes and added a new paragraph (b) to distinguish between pre-penalty and penalty notices. Also, provisions of Appendix C to Part 171 of the Customs Regulations which announce guidelines for the imposition and mitigation of penalties for violation of 19 U.S.C. 1641 have been amended to remove sections which are not consistent with regulatory changes promulgated in T.D. 00–17.

It is also noted that Customs is publishing in this issue of the **Federal Register** a separate document that details delegations of authority to decide petitions and supplemental petitions submitted pursuant to Part 171 and Part 172 of the Customs Regulations.

Regulatory Flexibility Act

Inasmuch as small business entities are infrequently repeat violators of Customs laws, and, therefore, will seldom need to avail themselves of the these regulatory provisions and file petitions for relief on a regular basis, it is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Eexcutive Order 12866

This document does not meet the criteria for a "significant regulatory action" under E.O. 12866.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 12

Bonds, Customs duties and inspection, Labeling, Marking, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizure and forfeiture, Trade agreements.

19 CFR Part 18

Bonds, Customs duties and inspection, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Financial and accounting procedures, Harbors, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 111

Administrative practice and procedure, Bonds, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 114

Carnets, Customs duties and inspection.

19 CFR Part 125

Bonds, Customs duties and inspection, Freight, Reporting and recordkeeping requirements.

19 CFR Part 134

Country of origin, Customs duties and inspection, Imports, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Reporting and recordkeeping requirements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Seizures and forfeitures.

19 CFR Part 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Seizures and forfeitures.

19 CFR Part 172

Administrative practice and procedure, Customs duties and inspection, Penalties.

Amendments to the Regulations

For the reasons stated above, parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172, Customs Regulations (19 CFR parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10, Customs Regulations (19 CFR Part 10) continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

2. Section 10.39 is amended by removing paragraph (f) and redesignating current paragraph (g) and (h), respectively, as paragraphs (f) and (g) and by revising the introductory paragraph of § 10.39(e) to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(e) If there has been a default with respect to any or all of the articles covered by the bond and a written petition for relief is filed as provided in part 172 of this chapter, it will be reviewed by the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the entry was filed. If the Fines, Penalties, and Forfeitures Officer is satisfied that the importation was properly entered under Chapter 98, subchapter XIII, and that there was no intent to defraud the revenue or delay the payment of duty, the Fines, Penalties, and Forfeitures Officer may cancel the liability for the payment of liquidated damages in any case in his or her delegated authority as follows:

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation and relevant specific authority citations for Part 12, Customs Regulations (19 CFR Part 12) continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.95 through 12.103 also issued under 15 U.S.C. 1241–1245;

* * * * *

2. Section 12.8(b) is amended by removing the number "$100,000" and by replacing it with the phrase "the Fines, Penalties, and Forfeitures Officer's delegated authority".

§ 12.102 [Amended]

3. Section 12.102 is amended by removing the number "60" and adding in its place the number "30".

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for Part 18, Customs Regulations (19 CFR Part 18) is revised to read as follows and the specific authority for § 18.8 is removed:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624.

* * * * *

2. Section 18.8(d) is revised to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

* * * * *

(d) In any case in which liquidated damages are imposed in accordance with this section and the Fines, Penalties, and Forfeitures Officer is satisfied by evidence submitted to him with a petition for relief filed in accordance with the provisions of Part 172 of this chapter that any violation of the terms and conditions of the bond occurred without any intent to evade any law or regulation, the Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel such claim upon the payment of any lesser amount or without the payment of any amount as may be deemed appropriate under the law and in view of the circumstances.

* * * * *

§ 18.24 [Amended]

3. Section 18.24 is amended by removing footnote 9.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24, Customs Regulations (19 CFR Part 24) continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701;

* * * * *

§ 24.24 [Amended]

2. The first sentence of § 24.24(h)(3) is amended by removing the phrase "published pursuant to the provisions of § 172.22(d)(1) of this chapter".

PART 111—CUSTOMS BROKERS

1. The general authority citation for Part 111, Customs Regulations (19 CFR Part 111) continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

2. Section 111.92 is revised to read as follows:

§ 111.92 Notice of monetary penalty.

(a) *Pre-penalty notice.* If assessment of a monetary penalty under § 111.91 is contemplated, Customs will issue a written notice which advises the broker or other person of the allegations or complaints against him and explains that the broker or other person has a right to respond to the allegations or complaints in writing within 30 days of the date of mailing of the notice. The Fines, Penalties, and Forfeitures Officer has discretion to provide additional time for good cause.

(b) *Penalty notice.* If the broker or other person files a timely response to the written notice of the allegations or complaints, the Fines, Penalties, and Forfeiture Officer will review this response and will either cancel the case, issue a notice of penalty in an amount which is lower than that provided for in the written notice of allegations or complaints or issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints. If no response is received from the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints.

§ 111.93 [Amended]

3. Section 111.93 is amended by removing the reference to "111.92" and adding in its place, "111.92(b)".

PART 113—CUSTOMS BONDS

1. The general authority citation and relevant specific authority citation for Part 113, Customs Regulations (19 CFR Part 113) continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.
Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

§ 113.46 [Removed]

2. Section 113.46 is removed.

§ 113.52 [Amended]

3. Section 113.52 is amended by removing the words "and 172.22(c)" from the parenthetical phrase contained therein.

§ 113.54 [Amended]

4. Section 113.54(a) is amended by removing "172.31" and adding in its place "172.11(b)".

PART 114—CARNETS

1. The general authority citation for Part 114, Customs Regulations (19 CFR Part 114) continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 114.34 [Amended]

2. Section 114.34(c) is amended by removing the final non-parenthetical sentence and the final parenthetical sentence.

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. The general authority citation and relevant specific authority citation for Part 125, Customs Regulations (19 CFR Part 125) continue to read as follows:

Authority: 19 U.S.C. 66, 1565, 1624.

* * * * *

Sections 125.41 and 125.42 also issued under 19 U.S.C. 1623.

2. Section 125.42 is revised to read as follows:

§ 125.42 Cancellation of liability.

The Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel liquidated damages incurred under the bond of the foreign trade zone operator, containing the bond conditions set forth in § 113.73 of this chapter, or under the bond of the cartman, lighterman, bonded carrier, bonded warehouse operator, container station operator or centralized examination station operator on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, upon the payment of such lesser amount, or without the payment of any amount, as the Fines, Penalties, and Forfeitures Officer may deem appropriate under the circumstances. Application for cancellation of liquidated damages incurred shall be made in accordance with the provisions of part 172 of this chapter.

PART 134—COUNTRY OF ORIGIN MARKING

1. The general authority citation for Part 134, Customs Regulations (19 CFR Part 134) continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

§ 134.54 [Amended]

2. Section 134.54 is amended by removing in paragraph (a) the phrase ", plus any estimated duty thereon as determined at the time of entry"; and by removing the second sentence in paragraph (b).

PART 145—MAIL IMPORTATIONS

1. The general authority citation and relevant specific authority citation for Part 145, Customs Regulations (19 CFR Part 145) continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618;

* * * * *

2. Section 145.4(b) is revised to read as follows:

§ 145.4 Dutiable merchandise without declaration or invoice, prohibited merchandise, and merchandise imported contrary to law.

* * * * *

(b) *Mitigation of forfeiture.* Any claimant incurring a forfeiture of merchandise for violation of this section may file a petition for relief pursuant to part 171 of this chapter. Mitigation of that forfeiture may occur consistent with mitigation guidelines.

* * * * *

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation and relevant specific authority citation for Part 162, Customs Regulations (19 CFR Part 162) continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

Section 162.48 also issued under 19 U.S.C. 1606, 1607, 1608, 1612, 1613b, 1618;

* * * * *

2. Section 162.48 is amended by revising the section heading and the heading of paragraph (b) to read as follows and by removing from the first sentence in paragraph (b) the phrase "and such value is less than $1,000,":

§ 162.48 Disposition of perishable and other seized property.

* * * * *

(b) *Disposition of other seized property.*

* * * * *

§ 162.74 [Amended]

3. The fourth sentence of § 162.74(c) is amended by removing the word "demanded" and replacing it with the word "determined".

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The general authority citation for Part 171, Customs Regulations (19 CFR Part 171) is revised to read as follows:

Authority: 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321; 46 U.S.C. App. 320.

* * * * *

2. Section 171.0 is revised to read as follows:

§ 171.0 Scope.

This part contains provisions relating to petitions for relief from fines, forfeitures, and certain penalties incurred, and petitions for the restoration of proceeds from sale of seized and forfeited property. This part does not relate to petitions on claims for liquidated damages or penalties which are guaranteed by the conditions of the International Carrier Bond (*see* § 113.64 of this Chapter).

3. Subparts A through E of Part 171 are revised to read as follows:

Subpart A—Application for Relief

Sec.
171.1 Petition for relief.
171.2 Filing a petition.
171.3 Oral presentations seeking relief.

Subpart B—Action on Petitions

171.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.
171.12 Petitions acted on at Customs Headquarters.
171.13 Limitations on consideration of petitions.
171.14 Headquarters advice.

Subpart C—Disposition of Petitions

171.21 Written decisions.
171.22 Decisions effective for limited time.
171.23 Decisions not protestable.

Subpart D—Offers in Compromise

171.31 Form of offers.
171.32 Acceptance of offers in compromise.

Subpart E—Restoration of Proceeds of Sale

171.41 Application of provisions for petitions for relief.
171.42 Time limit for filing petition for restoration.
171.43 Evidence required.
171.44 Forfeited property authorized for official use.

Subpart A—Application for Relief

§ 171.1 Petition for relief.

(a) *To whom addressed.* Petitions for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs must be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* For commercial violations, the petition for remission or mitigation must be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a responsible employee representative of the corporation. Electronic signatures are acceptable. In non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition may enlist a family member or other representative to file a petition on his behalf. The deciding Customs officer may, in his or her discretion, require proof of representation before consideration of any petition.

(c) *Form.* The petition for remission or mitigation need not be in any particular form. Customs can require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. The petition must set forth the following:

(1) A description of the property involved (if a seizure);

(2) The date and place of the violation or seizure;

(3) The facts and circumstances relied upon by the petitioner to justify remission or mitigation; and

(4) If a seizure case, proof of a petitionable interest in the seized property.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 171.2 Filing a petition.

(a) *Where filed.* A petition for relief must be filed with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed*—(1) Seizures. Petitions for relief from seizures must be filed within 30 days from the date of mailing of the notice of seizure.

(2) *Penalties.* Petitions for relief from penalties must be filed within 60 days of the mailing of the notice of penalty incurred.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition must be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty is assessed or a seizure is made and less than 180 days remain before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the seizure or penalty notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter will be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

§ 171.3 Oral presentations seeking relief.

(a) *For violation of section 592 or section 593A.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or section 593A, Tariff Act of 1930, as added (19 U.S.C. 1593a), the person named in the notice, in addition to filing a petition, may make an oral presentation seeking relief in accordance with this paragraph.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discretion of any official of the Customs Service or Department of the Treasury authorized to act on a petition or supplemental petition.

Subpart B—Action on Petitions

§ 171.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Remission or mitigation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), or section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any claim when he or she definitely determines that the act or omission forming the basis of any claim of penalty or forfeiture did not occur.

(c) *When violation is result of vessel in distress.* The Fines, Penalties, and Forfeitures Officer may remit without payment any penalty which arises for violation of the coastwise laws if he or she is satisfied that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

§ 171.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), section

5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and forfeitures which are outside of his or her delegated authority, the Fines, Penalties, and Forfeitures Officer will refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate, unless there has been no delegation to act by the Secretary of the Treasury or his designee. In those cases where there has been no delegation to act by the Secretary, the Chief, Penalties Branch, will forward the matter to the Department with a recommendation.

§ 171.13 Limitations on consideration of petitions.

(a) *Cases referred for institution of legal proceedings.* No action will be taken on any petition after the case has been referred to the Department of Justice for institution of legal proceedings. The petition will be forwarded to the Department of Justice.

(b) *Conveyance awarded for official use.* No petition for remission of forfeiture of a seized conveyance which has been forfeited and retained for official use will be considered unless it is filed before final disposition of the property is made. This does not affect petitions for restoration of proceeds of sale filed pursuant to the provisions of section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613).

§ 171.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case (except as provided in this section), without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to seizures and forfeitures, penalties, or mitigating or remitting any claim. This section does not apply to actual duty loss tenders determined by Customs pursuant to § 162.74(c) of this Chapter relating to prior disclosure and to actual duty loss demands made under § 162.79b of this Chapter. The request for advice may be initiated by the alleged violator or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in any case.

Subpart C—Disposition of Petitions

§ 171.21 Written decisions.

If a petition for relief relates to a violation of sections 592, 593A or 641, Tariff Act of 1930, as amended (19 U.S.C. 1592, 19 U.S.C. 1593a, or 19 U.S.C. 1641), the petitioner will be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based.

§ 171.22 Decisions effective for limited time.

A decision to mitigate a penalty or to remit a forfeiture upon condition that a stated amount is paid will be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount or arrangements for such payment are not made, or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for forfeiture will be deemed applicable and will be enforced by promptly referring the matter, after required collection action, if appropriate, to the appropriate Office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs.

§ 171.23 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit a forfeiture or mitigate a penalty is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit a forfeiture or mitigate a penalty is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated amount as accord and satisfaction.* Payment of a mitigated amount in compliance with an administrative decision on a petition or supplemental petition for relief will be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated amount will never serve as a bar to filing a supplemental petition for relief.

Subpart D—Offers in Compromise

§ 171.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617) must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

§ 171.32 Acceptance of offers in compromise.

An offer in compromise will be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

Subpart E—Restoration of Proceeds of Sale

§ 171.41 Application of provisions for petitions for relief.

The general provisions of subpart A of this part on filing and content of petitions for relief apply to petitions for restoration of proceeds of sale except insofar as modified by this subpart.

§ 171.42 Time limit for filing petition for restoration.

A petition for the restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) must be filed within 3 months after the date of the sale.

§ 171.43 Evidence required.

In addition to such other evidence as may be required under the provisions of subpart A of this part, the petition for restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), must show the interest of the petitioner in the property. The petition must be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him from knowing of it.

§ 171.44 Forfeited property authorized for official use.

If forfeited property which is the subject of a claim under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) has been authorized for official use, retention or delivery will be regarded as the sale thereof for the purposes of section 613. The

appropriation available to the receiving agency for the purchase, hire, operation, maintenance and repair of property of the kind so received is available for the granting of relief to the claimant and for the satisfaction of liens for freight, charges and contributions in general average that may have been filed.

4. Subpart G is added to part 171 to read as follows:

Subpart G—Supplemental Petitions for Relief

Sec.
171.61 Time and place of filing.
171.62 Supplemental petition decision authority.
171.63 Appeals to the Secretary of the Treasury in certain 1592 cases.
171.64 Waiver of statute of limitations.

Subpart G—Supplemental Petitions for Relief

§ 171.61 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition must be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to the entries involved in a penalty case which reduces the loss of duties upon which the mitigated penalty amount was based (whichever is later) unless another time to file such a supplemental petition is prescribed in the decision. The filing of a supplemental petition may be subject to the conditions prescribed in § 171.64 of this part. A supplemental petition may be filed whether or not the mitigated penalty or forfeiture remission amount designated in the decision on the original petition is paid.

§ 171.62 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officers.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer, will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating that additional relief to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to a designated Headquarters official assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641 where the amount of the penalty assessed exceeds $10,000 will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings.

(b) *Decisions of Customs Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, will be forwarded to the Director, International Trade Compliance Division, Customs Headquarters, for review and decision.

(c) *Decisions of Treasury Department.* Supplemental petitions filed on cases where the original decision was made in the Treasury Department, will be referred to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who will forward the supplemental petitions to the Department with a recommendation.

(d) *Authority of Assistant Commissioner.* Any authority given to any Headquarters official by this part may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

§ 171.63 Appeals to the Secretary of the Treasury in certain 1592 cases.

A petitioner filing a supplemental petition pursuant to this subpart from a decision of the Chief, Penalties Branch, Office of Regulations and Rulings, with respect to any liability assessed under 19 U.S.C. 1592 may request that the petition be accepted as an appeal to the Secretary of the Treasury. The Secretary will accept for decision any such supplemental petition when in his discretion he determines that such petition raises a question of fact, law or policy of such importance as to require a decision by the Secretary. If the Secretary declines to accept an appeal for decision, the petitioner will be so informed. In such a case, a decision will be issued thereon by the Director, International Trade Compliance Division.

§ 171.64 Waiver of statute of limitations.

The deciding Customs official always reserves the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a supplemental petition in any case in which less than one year remains before the statute will be available as a defense to all or part of that case.

Appendix C to Part 171

5. Appendix C to Part 171 is amended by removing the NOTE following section I.D., removing section I.E., redesignating section I.F. as section I.E., removing section I.G. and redesignating section I.H. as section I.F.

PART 172—[REVISED]

1. Part 172 is revised to read as follows:

PART 172—CLAIMS FOR LIQUIDATED DAMAGES; PENALTIES SECURED BY BONDS

Sec.
172.0 Scope.

Subpart A—Notice of Claim and Application for Relief

172.1 Notice of liquidated damages or penalty incurred and right to petition for relief.
172.2 Petition for relief.
172.3 Filing a petition.
172.4 Demand on surety.

Subpart B—Action on Petitions

172.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.
172.12 Petitions acted at Customs Headquarters.
172.13 Limitations on consideration of petitions.
172.14 Headquarters advice.

Subpart C—Disposition of Petitions

172.21 Decisions effective for limited time.
172.22 Decisions not protestable.

Subpart D—Offers in Compromise

172.31 Form of offers.
172.32 Authority to accept offers.
172.33 Acceptance of offers in compromise.

Subpart E—Supplemental Petitions for Relief

172.41 Time and place of filing.
172.42 Supplemental petition decision authority.
172.43 Waiver of statute of limitations.

Authority: 19 U.S.C. 66, 1618, 1623, 1624; 46 U.S.C. App. 320.

§ 172.0 Scope.

This part contains provisions relating to petitions for relief from claims for liquidated damages arising under any Customs bond and penalties incurred which are secured by the conditions of the International Carrier Bond (see § 113.64 of this Chapter). This part does not relate to petitions on unsecured fines or penalties or seizures and forfeitures, nor does it relate to petitions for the restoration of proceeds of sale pursuant to 19 U.S.C. 1613.

Subpart A—Notice of Claim and Application for Relief

§ 172.1 Notice of liquidated damages or penalty incurred and right to petition for relief.

(a) *Notice of liquidated damages or penalty incurred.* When there is a failure to meet the conditions of any bond posted with Customs or when a violation occurs which results in assessment of a penalty which is secured by a Customs bond, the principal will be notified in writing of any liability for liquidated damages or penalty incurred and a demand will be made for payment. The sureties on such bond will also be notified in writing of any such liability at the same time.

(b) *Notice of right to petition for relief.* The notice will inform the principal that application may be made for relief from payment of liquidated damages or penalty.

§ 172.2 Petition for relief.

(a) *To whom addressed.* Petitions for the cancellation of any claim for liquidated damages or remission or mitigation of a fine or penalty secured by a Customs bond incurred under any law or regulation administered by Customs must be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* The petition for remission or mitigation must be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or responsible employee representative of the corporation. Electronic signatures are acceptable. The deciding Customs officer may, in his or her discretion and with articulable cause, require proof of representation before consideration of any petition.

(c) *Form.* The petition for cancellation, remission or mitigation need not be in any particular form. Customs can require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. The petition must set forth the following:

(1) The date and place of the violation; and

(2) The facts and circumstances relied upon by the petitioner to justify cancellation, remission or mitigation.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 172.3 Filing a petition.

(a) *Where filed.* A petition for relief must be filed by the bond principal with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed.* Petitions for relief must be filed within 60 days from the date of mailing to the bond principal the notice of claim for liquidated damages or penalty secured by a bond.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition must be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty or claim for liquidated damages is assessed and fewer than 180 days remain from the date of penalty or liquidated damages notice before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter will be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

172.4 Demand on surety.

If the principal fails to file a petition for relief or fails to comply in the prescribed time with a decision to mitigate a penalty or cancel a claim for liquidated damages issued with regard to a petition for relief, Customs will make a demand for payment on surety. The surety will then have 60 days from the date of the demand to file a petition for relief.

Subpart B—Action on Petitions

§ 172.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Mitigation or cancellation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer, notwithstanding any other law or regulation, is empowered to mitigate any penalty or cancel any claim for liquidated damages on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any case without payment of a mitigated or cancellation amount when he or she definitely determines that the act or omission forming the basis of any claim of penalty or claim for liquidated damages did not occur.

§ 172.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and claims for liquidated damages which are outside of his or her delegated authority the Fines, Penalties, and Forfeitures Officer will refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered, notwithstanding any other law or regulation, to mitigate penalties or cancel bond claims on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate.

§ 172.13 Limitations on consideration of petitions.

(a) *Cases referred for institution of legal proceedings.* No action will be taken on any petition if the civil liability has been referred to the Department of Justice for institution of legal proceedings. The petition will be forwarded to the Department of Justice.

(b) *Delinquent sureties.* No action will be taken on any petition from a principal or surety if received after the issuance to surety of a notice to show cause pursuant to the provisions of § 113.38(c)(3) of this chapter.

§ 172.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case (except as provided in this section), without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to penalties secured by bonds (including penalty-based determinations of duty except as provided in this section), claims for liquidated damages or mitigating any claim. This section does not apply to actual duty loss tenders determined by Customs pursuant to § 162.74(c) of this chapter relating to prior disclosure. The

request for advice may be initiated by the bond principal, surety or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in any case.

Subpart C—Disposition of Petitions

§ 172.21 Decisions effective for limited time.

A decision to mitigate a penalty or to cancel a claim for liquidated damages upon condition that a stated amount is paid will be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount is not made or a petition or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for liquidated damages will be deemed applicable and will be enforced by promptly transmitting the matter, after required collection action, if appropriate, to the appropriate office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs. Any such case may also be the basis for a sanction action commenced in accordance with regulations in this chapter.

§ 172.22 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated or cancellation amount as accord and satisfaction.* Payment of a mitigated or cancellation amount in compliance with an administrative decision on a petition or supplemental petition for relief will be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated or cancellation amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated or cancellation amount will never serve as a bar to filing a supplemental petition for relief.

Subpart D—Offers in Compromise

§ 172.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617), must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

§ 172.32 Authority to accept offers.

The authority to accept offers in compromise, subject to the recommendation of the General Counsel of the Treasury or his delegee, resides with the official having authority to decide a petition for relief, except that authority to accept offers in compromise submitted with regard to penalties secured by a bond or claims for liquidated damages which are the subject of a letter to show cause issued to a surety in anticipation of possible action involving nonacceptance of bonds authorized under the provisions of part 113 of this chapter will reside with the designated Headquarters official who issued the show cause letter.

§ 172.33 Acceptance of offers in compromise.

An offer in compromise will be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

Subpart E—Supplemental Petitions for Relief

§ 172.41 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. The petitioner must file such a supplemental petition within 60 days from the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to issues serving as the basis for the claim for liquidated damages (whichever is later) unless another time to file such a supplemental petition is prescribed in the decision. A supplemental petition may be filed whether or not the mitigated amount designated in the decision on the original petition is paid.

§ 172.42 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officers.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer, will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating additional relief to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to a designated Headquarters official assigned to a field location for review and decision.

(b) *Decisions of Customs Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, will be forwarded to the Director, International Trade Compliance Division, for review and decision.

(c) *Authority of Assistant Commissioner.* Any authority given to any Headquarters official by this part may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

§ 172.43 Waiver of statute of limitations.

The deciding Customs official always reserves the right to require a waiver of the statute of limitations executed by the charged party or parties as a condition precedent before accepting a supplemental petition in any case in which less than one year remains before the statute will be available as a defense to all or part of that case.

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 25, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–22346 Filed 9–1–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Neomycin Sulfate Oral Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for the oral use of neomycin sulfate solution for the treatment and control of colibacillosis in cattle, swine, sheep, and goats.

DATES: This rule is effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212.

SUPPLEMENTARY INFORMATION: Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861, filed ANADA 200–289 that provides for the oral use of neomycin sulfate solution for the treatment and control of colibacillosis in cattle, swine, sheep, and goats. Med-Pharmex's ANADA 200–289 NEORAL® (neomycin sulfate) Oral Solution is approved as a generic copy of Pharmacia & Upjohn's NADA 011–315 NEOMIX® 325 Soluble Powder. The application is approved as of July 3, 2000, and the regulations in 21 CFR 520.1485 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.1485 [Amended]

2. Section 520.1485 *Neomycin sulfate oral solution* is amended in paragraph (b) by adding in numerical order after "000009," the entry "051259,".

Dated: August 23, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–22571 Filed 9–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Tylosin Phosphate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Animal Health. The NADA provides for use of approved, single-ingredient monensin and tylosin phosphate Type A medicated articles to make two-way combination Type C medicated feeds used as an aid in the prevention of coccidiosis, for increased rate of weight gain, and improved feed efficiency in broiler chickens. Technical corrections are also being made.

DATES: This rule is effective September 5, 2000.

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

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141–164 that provides for use of Coban® (44, 45, or 60 grams per pound (g/lb) of monensin activity as monensin sodium) and Tylan® (10 g/lb of tylosin phosphate) Type A medicated articles to make combination Type C medicated broiler chicken feeds. The combination Type C medicated feeds contain 90 to 110 g/ton monensin and 4 to 50 g/ton tylosin phosphate and are used as an aid in the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, for increased rate of weight gain, and improved feed efficiency in broiler chickens. The NADA is approved as of July 3, 2000, and the regulations in 21 CFR 558.355 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Also, 21 CFR 558.625 is being revised by updating the address for Dockets Management Branch in paragraph (a) and by moving paragraph (f)(1)(vi)(*e*) to precede paragraph (f)(2), correcting a sequence error in the format of this paragraph.

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

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.355 is amended by adding paragraph (f)(1)(xxviii) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(1) * * *

(xxviii) *Amount per ton.* Monensin, 90 to 110 grams, plus tylosin phosphate, 4 to 50 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *Eimeria necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, for increased rate of weight gain, and improved feed efficiency.

(*b*) *Limitations.* Feed continuously as sole ration. In the absence of coccidiosis, the use of monensin with no withdrawal period may limit feed intake resulting in reduced weight gain. Do not feed to laying chickens. As monensin sodium and tylosin phosphate provided by No. 000986 in § 510.600(c) of this chapter.

* * * * *

§ 558.625 [Amended]

3. Section 558.625 *Tylosin* is amended in paragraph (a) by removing "rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857," and by adding in its place "5630 Fishers Lane, rm. 1061, Rockville, MD 20852," and by redesignating paragraph (f)(2)(v)(*e*) as paragraph (f)(1)(vi)(*e*).

Dated: August 23, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–22572 Filed 9–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Animal Health. The NADA provides for use of approved, single ingredient monensin and bambermycins Type A medicated articles to make two-way combination Type C medicated feeds used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency in growing turkeys.

DATES: This rule is effective September 5, 2000.

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

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 140–955 that provides for use of Coban® (45 or 60 grams per pound (g/lb) of monensin as monensin sodium) and Flavomycin® (2, 4, or 10 g/lb of bambermycins activity) Type A medicated articles to make combination Type C medicated feeds. The combination Type C medicated feeds containing 54 to 90 g/ton monensin and 1 to 2 g/ton bambermycins and are used for prevention of coccidiosis caused by *Eimeria adenoeides*, *E. meleagrimitis*, and *E. gallopavonis*; and for improved feed efficiency in growing turkeys. The combination Type C medicated feeds containing 54 to 90 g/ton monensin and 2 g/ton bambermycins and are used for prevention of coccidiosis caused by *E. adenoeides*, *E. meleagrimitis*, and *E. gallopavonis*; and for increased rate of weight gain and improved feed efficiency in growing turkeys. The NADA is approved as of June 28, 2000, and the regulations in 21 CFR 558.95 and 558.355 are amended to reflect the approval.

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

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.95 is amended by redesignating paragraphs (d)(5)(iii) and (d)(5)(iv) as (d)(5)(iv) and (d)(5)(v), and by adding new paragraph (d)(5)(iii) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(5) * * *

(iii) Monensin as in § 558.355.

* * * * *

3. Section 558.355 is amended by adding paragraphs (f)(2)(v) and (f)(2)(vi) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(2) * * *

(v) *Amount per ton.* Monensin, 54 to 90 grams, plus bambermycins, 1 to 2 grams.

(*a*) *Indications for use.* For the prevention of coccidiosis in turkeys caused by *E. adenoeides*, *E. meleagrimitis*, and *E. gallopavonis*, and for improved feed efficiency in growing turkeys.

(*b*) *Limitations.* For growing turkeys only. Feed continuously as sole ration. Some strains of turkey coccidia may be monensin tolerant or resistant. Monensin may interfere with development of immunity to turkey coccidiosis. Bambermycins as provided by No. 012799 in § 510.600(c) of this chapter.

(vi) *Amount per ton.* Monensin, 54 to 90 grams, plus bambermycins, 2 grams.

(*a*) *Indications for use.* For the prevention of coccidiosis in turkeys caused by *E. adenoeides*, *E. meleagrimitis*, and *E. gallopavonis*, and

for increased rate of weight gain and improved feed efficiency in growing turkeys.

(*b*) *Limitations.* For growing turkeys only. Feed continuously as sole ration. Some strains of turkey coccidia may be monensin tolerant or resistant. Monensin may interfere with development of immunity to turkey coccidiosis. Bambermycins as provided by No. 012799 in § 510.600(c) of this chapter.

* * * * *

Dated: August 23, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–22570 Filed 9–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin, Bacitracin Methylene Disalicylate, and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved, single-ingredient monensin, bacitracin methylene disalicylate (BMD), and roxarsone Type A medicated articles to make three-way combination drug Type C medicated feed used as an aid in the prevention of coccidiosis, as an aid in the prevention and control of necrotic enteritis, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation in replacement chickens.

DATES: This rule is effective September 5, 2000.

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

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–138 that provides for use of Coban® (45 or 60 grams per pound (g/lb) of monensin as monensin sodium), BMD (10, 25, 30, 40, 50, 60, or 75 g/lb BMD), and 3–Nitro® (45.4, 90, 227, or 360 g/lb roxarsone) Type A medicated articles to make combination Type C medicated feeds for replacement chickens intended for use as caged layers. The Type C medicated feeds contain 90 to 110 g/ton monensin, 50 or 100 to 200 g/ton BMD, and 22.7 to 45.4 g/ton roxarsone and are used as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*; as an aid in the prevention (at 50 g/ton BMD) or control (at 100 to 200 g/ton BMD) of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin; and for increased rate of weight gain, improved feed efficiency, and improved pigmentation. The NADA is approved as of June 28, 2000, and 21 CFR 558.355 is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.355 is amended by redesignating paragraphs (f)(4)(ii) and (f)(4)(iii) as paragraphs (f)(4)(i)(*a*) and (f)(4)(i)(*b*), and by adding new paragraphs (f)(4)(ii) and (f)(4)(iii) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(4) * * *

(ii) *Amount per ton.* Monensin, 90 to 110 grams; bacitracin methylene disalicylate, 50 grams; plus roxarsone, 22.7 to 45.4 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*; as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin; and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(*b*) *Limitations.* Feed continuously as sole ration. Do not feed to laying chickens. Use as sole source of organic arsenic. Do not feed to chickens over 16 weeks of age. Poultry should have access to drinking water at all times. Drug overdosage or lack of water may result in leg weakness or paralysis. Withdraw 5 days before slaughter. As monensin sodium provided by 000986; bacitracin methylene disalicylate and roxarsone as provided by 046573 in § 510.600(c) of this chapter.

(iii) *Amount per ton.* Monensin, 90 to 110 grams; bacitracin methylene disalicylate, 100 to 200 grams; plus roxarsone, 22.7 to 45.4 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*; as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin; and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(*b*) *Limitations.* Feed continuously as sole ration. To control necrotic enteritis, start medication at first clinical signs of disease; vary bacitracin dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 grams/ton). Do not feed to laying chickens. Use as sole source of organic arsenic. Do not feed to chickens over 16 weeks of age. Poultry should have access to drinking water at all times. Drug overdosage or lack of water may result in leg weakness or paralysis. Withdraw 5 days before slaughter. As monensin sodium provided by 000986; bacitracin methylene disalicylate and roxarsone as

provided by 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: August 24, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–22620 Filed 9–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8901]

RIN 1545–AW16

Qualified Lessee Construction Allowances for Short-Term Leases

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning an exclusion from gross income for qualified lessee construction allowances provided by a lessor to a lessee for the purpose of constructing long-lived property to be used by the lessee pursuant to a short-term lease. The final regulations affect a lessor and a lessee paying and receiving, respectively, qualified lessee construction allowances that are depreciated by a lessor as nonresidential real property and excluded from the lessee's gross income. The final regulations provide guidance on the exclusion, the information required to be furnished by the lessor and the lessee, and the time and manner for providing that information to the IRS.

DATES: *Effective Date:* These regulations are effective October 5, 2000.

Date of Applicability: For date of applicability of § 1.110–1, see § 1.110–1(d).

FOR FURTHER INFORMATION CONTACT: Paul Handleman, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1661. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour.

Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On September 20, 1999, the IRS published proposed regulations (REG–106010–98) in the **Federal Register** (64 FR 50783) inviting comments under section 110. A public hearing was held January 19, 2000. Numerous comments have been received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Public Comments

In accordance with section 110(a), the proposed regulations provided that amounts provided to a lessee by a lessor for property to be constructed and used by the lessee pursuant to a lease are not includible in the lessee's gross income if the amount is a qualified lessee construction allowance. The proposed regulations defined a qualified lessee construction allowance as any amount received in cash (or treated as a rent reduction) by a lessee from a lessor under a short-term lease of retail space, provided the purpose and expenditure requirements are met.

Expenditure Requirement

The proposed regulations required that a qualified lessee construction allowance be expended by the lessee in the taxable year received on the construction or improvement of qualified long-term real property for use in the lessee's trade or business at the retail space. However, the proposed regulations deemed an amount to have been expended by a lessee in the taxable year in which the construction allowance was received by the lessee if the amount is expended within 8½ months after the close of that taxable year.

Several commentators maintained that the proposed rule prescribing a time limit for making the expenditure is not required by the statute or the legislative history and should be eliminated. One commentator, for example, pointed out the absence of an explicit expenditure requirement in section 110 like the one found in section 118(c)(2)(B), which requires that an expenditure relating to a nontaxable contribution in aid of construction be made before the end of the second taxable year after the year in which such amount was received.

Section 110 does not provide an explicit expenditure time limit, but it also does not toll the statute of limitations until the taxpayer notifies the Secretary that the amount has been expended as does section 118. The lack of a statute of limitation tolling provision in section 110 would be troublesome if there was no limitation on the time period to make the qualified expenditure. In addition, section 110(a) provides that an amount may be excluded only to the extent that such amount does not exceed the amount expended by the lessee for the construction or improvement of qualified long-term real property.

The IRS and Treasury Department believe that the absence of an extension of the statute of limitations and use of the term "expended" in the past tense indicate that the amount must be expended by the end of the taxable year it is received. Accordingly, the final regulations retain the expenditure time limitation. However, in recognition that a lessee may not be able to expend the amount in the same taxable year the lessee receives the construction allowance from the lessor, the final regulations also retain the 8½ month rule provided in the proposed regulations. This 8½ month rule, which grants the lessee an additional 8½ months after the close of the taxable year in which the construction allowance was received to expend the amount, is consistent with the time period, including extensions, that a corporate taxpayer has to file its return for the taxable year in which the construction allowance is received.

Commentators requested that to the extent the final regulations retain the expenditure requirement, the requirement should be modified to include construction allowances used to reimburse lessee expenditures made in a prior year. In response to these comments, the final regulations clarify that, provided the lessee has not

depreciated the expenditures, reimbursements received in a taxable year after the year in which the expenditures are made by the lessee are timely for purposes of the expenditure requirement.

Purpose Requirement

Consistent with section 110(a), the proposed regulations provided that a qualified lessee construction allowance must be under a short-term lease of retail space and for the purpose of constructing or improving qualified long-term real property for use in the lessee's trade or business at the retail space. The proposed regulations required that the lease agreement for the retail space expressly provide that the construction allowance is for the purpose of constructing or improving qualified long-term real property for use in the lessee's trade or business at that retail space. The purpose requirement was intended to further Congressional intent of ensuring consistency in the treatment of the construction allowance by both the lessor and the lessee.

Commentators suggested deleting the requirement in the proposed regulations that the lease agreement "expressly provides" that a construction allowance be for the purpose of constructing or improving qualified long-term real property. Other commentators suggested changing this language to "substantially provides" or using a standard that would lead a reasonable person to conclude that the purpose of the construction allowance amount is for the construction or improvement of qualified long-term real property. The final regulations do not adopt these suggestions. The IRS and the Treasury Department believe that this express language is consistent with the requirements of section 110(a) and is necessary to help ensure that the lessor and the lessee take consistent tax positions.

In addition, commentators noted that lease agreements do not necessarily address construction allowances. The construction allowance provisions may be contained in another document executed contemporaneously with the lease agreement or executed during the lease term. For example, the lessor may provide a construction allowance during the lease term for the remodeling of the retail space by the lessee. In response to these comments, the final regulations clarify that an ancillary agreement executed contemporaneously with the payment of a construction allowance, whether executed with the lease or during the term of the lease, is considered a provision of the lease agreement for this purpose.

Definition of Retail Space

Section 110(c)(3) defines the term "retail space" as real property leased, occupied, or otherwise used by a lessee in its trade or business of selling tangible personal property or services to the general public. The proposed regulations specifically requested comments on whether the definition of "retail space" needs to be clarified.

In response to comments, the final regulations clarify that offices for hair stylists, tailors, shoe repairmen, doctors, lawyers, accountants, insurance agents, financial advisors, stock brokers, securities dealers (including dealers who sell securities out of inventory), and bankers are included in the definition of retail space. The final regulations also clarify that a taxpayer is selling to the general public if the products or services for sale are made available to everyone even though only certain customers or clients are targeted.

A commentator suggested that retail space should include back-office support functions that are contiguous to the retail sales area and not be limited only to areas where customers purchase products and services. Section 110(c)(3) and the proposed regulations only require that the property be used "in the trade or business" of selling tangible personal property or services to the general public. In response to these comments, the final regulations state that the term "retail space" includes not only the space where the retail sales are made, but also space where activities supporting the retail activity are performed (such as an administrative office, a storage area, and an employee lounge).

Definition of Lease Term

Consistent with section 110(c)(2), the proposed regulations defined a short-term lease as a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined pursuant to section 168(i)(3)). Section 168(i)(3) provides rules on determining when renewal options will be considered part of the lease term. Section 168(i)(3)(B) provides that, in the case of nonresidential real property or residential rental property, any option to renew at fair market value, determined at the time of renewal, is not taken into account for purposes of determining the lease term.

A commentator suggested that the final regulations stipulate that certain common renewal options will be considered to be at fair market value. For example, the commentator suggested that if a lease sets rent at a certain percentage of sales for the original lease term and uses that same percentage of sales for renewal options, the renewals should be considered to be at fair market value. As the comment relates to the determination of lease term under section 168 and would affect other provisions in addition to section 110 that reference section 168(i)(3), such as sections 142 and 280F, the comment is beyond the scope of this regulation. Accordingly, the final regulations do not adopt the suggested comment.

Information Requirement

The proposed regulations required qualified lessee construction allowance information to be furnished by the lessor and the lessee to the IRS, and described the time and manner for providing that information to the IRS. The proposed regulations also provided that a lessor or a lessee that fails to furnish the required information may be subject to a penalty under section 6721.

A commentator suggested that the required information to be furnished should be the information that is current at the time the lease is executed. According to the commentator, it would not be unusual for a lease to be executed years prior to the payment and receipt of the construction allowance. One of the parties to the lease may have been acquired by another taxpayer or its name and address may have changed.

The final regulations do not adopt the suggestion. The purpose of the information reporting by the lessor and the lessee is to ensure consistent treatment of the construction allowance as nonresidential property owned by the lessor. Accordingly, it is imperative that the identity of the persons paying and receiving the construction allowance amount and relevant information provided be correct.

A commentator suggested that the information requirement should absolve the party filing the information statement from any penalty under section 6721 if the party relied upon incorrect information received from the other party or if the information cannot be obtained from the other party after reasonable efforts. Section 6724(a) provides that no penalty shall be imposed under section 6721 with respect to any failure if it is shown that such failure is due to reasonable cause and not willful neglect. Thus, no penalty under section 6721 will apply to a lessor (or a lessee) if the failure to furnish qualified lessee construction allowance information resulted from the lessee (or the lessor) providing incorrect information to the other party to the lease upon which the lessor (or the lessee) relied in good faith.

Another commentator suggested that the information to be furnished by a lessor is duplicative because the lessee is required to furnish the same information to the IRS. According to the commentator, the lessee should bear the entire burden of filing the required information because the lessee is the primary beneficiary of section 110. The final regulations do not adopt the commentator's suggestion. The information provided by the lessor is helpful in corroborating the information provided by the lessee and ensures that the lessor treats the amount as nonresidential real property on its return. Moreover, the reporting requirement in section 110(d) specifically provides that both the lessor and the lessee should furnish information.

Effective Date

The proposed regulations proposed an effective date applicable to leases entered into on or after the date final regulations are published in the **Federal Register**. A commentator suggested delaying the effective date of the final regulations to allow businesses a short period to conform their business practices to the final regulations. The final regulations adopt this suggestion by making the regulations effective 30 days after the date the final regulations are published in the **Federal Register**.

Although the final regulations do not provide for an election to apply the regulations retroactively, taxpayers who comply with the rules set forth in the regulations for leases entered into after August 5, 1997, and prior to the effective date of the regulations (other than the reporting requirement) will be treated as meeting the requirements of section 110.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.110–1 also issued under 26 U.S.C. 110(d); * * *

Par. 2. Section 1.110–1 is added to read as follows:

§ 1.110–1 Qualified lessee construction allowances.

(a) *Overview.* Amounts provided to a lessee by a lessor for property to be constructed and used by the lessee pursuant to a lease are not includible in the lessee's gross income if the amount is a qualified lessee construction allowance under paragraph (b) of this section.

(b) *Qualified lessee construction allowance*—(1) *In general.* A qualified lessee construction allowance means any amount received in cash (or treated as a rent reduction) by a lessee from a lessor—

(i) Under a short-term lease of retail space;

(ii) For the purpose of constructing or improving qualified long-term real property for use in the lessee's trade or business at that retail space; and

(iii) To the extent the amount is expended by the lessee in the taxable year received on the construction or improvement of qualified long-term real property for use in the lessee's trade or business at that retail space.

(2) *Definitions*—(i) *Qualified long-term real property* is nonresidential real property under section 168(e)(2)(B) that is part of, or otherwise present at, the retail space referred to in paragraph (b)(1)(i) of this section and which reverts to the lessor at the termination of the lease. Thus, qualified long-term real property does not include property qualifying as section 1245 property under section 1245(a)(3).

(ii) *Short-term lease* is a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined pursuant to section 168(i)(3)).

(iii) *Retail space* is nonresidential real property under section 168(e)(2)(B) that is leased, occupied, or otherwise used by the lessee in its trade or business of selling tangible personal property or services to the general public. The term retail space includes not only the space where the retail sales are made, but also space where activities supporting the retail activity are performed (such as an administrative office, a storage area, and employee lounge). Examples of services typically sold to the general public include services provided by hair stylists, tailors, shoe repairmen, doctors, lawyers, accountants, insurance agents, stock brokers, securities dealers (including dealers who sell securities out of inventory), financial advisors and bankers. For purposes of this paragraph (b)(2)(iii), a taxpayer is selling to the general public if the products or services for sale are made available to the general public, even if the product or service is targeted to certain customers or clients.

(3) *Purpose requirement.* An amount will meet the requirement in paragraph (b)(1)(ii) of this section only to the extent that the lease agreement for the retail space expressly provides that the construction allowance is for the purpose of constructing or improving qualified long-term real property for use in the lessee's trade or business at the retail space. An ancillary agreement between the lessor and the lessee providing for a construction allowance, executed contemporaneously with the lease or during the term of the lease, is considered a provision of the lease agreement for purposes of the preceding sentence, provided the agreement is executed before payment of the construction allowance.

(4) *Expenditure requirement*—(i) *In general.* Expenditures referred to in paragraph (b)(1)(iii) of this section may be treated as being made first from the lessee's construction allowance. Tracing of the construction allowance to the actual lessee expenditures for the construction or improvement of

qualified long-term real property is not required. However, the lessee should maintain accurate records of the amount of the qualified lessee construction allowance received and the expenditures made for qualified long-term real property.

(ii) *Time when expenditures deemed made.* For purposes of paragraph (b)(1)(iii) of this section, an amount is deemed to have been expended by a lessee in the taxable year in which the construction allowance was received by the lessee if—

(A) The amount is expended by the lessee within 8½ months after the close of the taxable year in which the amount was received; or

(B) The amount is a reimbursement from the lessor for amounts expended by the lessee in a prior year and for which the lessee has not claimed any depreciation deductions.

(5) *Consistent treatment by lessor.* Qualified long-term real property constructed or improved with any amount excluded from a lessee's gross income by reason of paragraph (a) of this section must be treated as nonresidential real property owned by the lessor (for purposes of depreciation under 168(e)(2)(B) and determining gain or loss under section 168(i)(8)(B)). For purposes of the preceding sentence, the lessor must treat the construction allowance as fully expended in the manner required by paragraph (b)(1)(iii) of this section unless the lessor is notified by the lessee in writing to the contrary. General tax principles apply for purposes of determining when the lessor may begin depreciation of its nonresidential real property. The lessee's exclusion from gross income under paragraph (a) of this section, however, is not dependent upon the lessor's treatment of the property as nonresidential real property.

(c) *Information required to be furnished*—(1) In general. The lessor and the lessee described in paragraph (b) of this section who are paying and receiving a qualified lessee construction allowance, respectively, must furnish the information described in paragraph (c)(3) of this section in the time and manner prescribed in paragraph (c)(2) of this section.

(2) *Time and manner for furnishing information.* The requirement to furnish information under paragraph (c)(1) of this section is met by attaching a statement with the information described in paragraph (c)(3) of this section to the lessor's or the lessee's, as applicable, timely filed (including extensions) Federal income tax return for the taxable year in which the construction allowance was paid by the lessor or received by the lessee (either in cash or treated as a rent reduction), as applicable. A lessor or a lessee may report the required information for several qualified lessee construction allowances on a combined statement. However, a lessor's or a lessee's failure to provide information with respect to each lease will be treated as a separate failure to provide information for purposes of paragraph (c)(4) of this section.

(3) *Information required*—(i) *Lessor.* The statement provided by the lessor must contain the lessor's name (and, in the case of a consolidated group, the parent's name), employer identification number, taxable year and the following information for each lease:

(A) The lessee's name (in the case of a consolidated group, the parent's name).

(B) The address of the lessee.

(C) The employer identification number of the lessee.

(D) The location of the retail space (including mall or strip center name, if applicable, and store name).

(E) The amount of the construction allowance.

(F) The amount of the construction allowance treated by the lessor as nonresidential real property owned by the lessor.

(ii) *Lessee.* The statement provided by the lessee must contain the lessee's name (and, in the case of a consolidated group, the parent's name), employer identification number, taxable year and the following information for each lease:

(A) The lessor's name (in the case of a consolidated group, the parent's name).

(B) The address of the lessor.

(C) The employer identification number of the lessor.

(D) The location of the retail space (including mall or strip center name, if applicable, and store name).

(E) The amount of the construction allowance.

(F) The amount of the construction allowance that is a qualified lessee construction allowance under paragraph (b) of this section.

(4) *Failure to furnish information.* A lessor or a lessee that fails to furnish the information required in this paragraph (c) may be subject to a penalty under section 6721.

(d) *Effective date.* This section is applicable to leases entered into on or after October 5, 2000.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding an entry for 1.110–1 to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section identified and described	Current OMB control No.
* * * * *	
1.110–1	1545–1661
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: August 29, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–22669 Filed 9–1–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 25

[TD 8899]

RIN 1545–AW25

Definition of a Qualified Interest in a Grantor Retained Annuity Trust and a Grantor Retained Unitrust

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the definition of a qualified interest under section 2702 of the Internal Revenue Code. The final regulations apply to a grantor retained annuity trust (GRAT) and a grantor retained unitrust (GRUT) in determining whether a retained interest is a qualified interest. These final regulations affect individuals who make a transfer in trust to a family member and retain an interest in the trust. These final regulations clarify that a trust that uses a note, other debt instrument, option, or similar financial arrangement to satisfy the annual payment obligation does not meet the requirements of section 2702(b).

DATES: *Effective Date:* These regulations are effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: James F. Hogan, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 22, 1999, the IRS published in the **Federal Register** (64 FR 33235) a notice of proposed rulemaking (REG–108287–98) relating to the definition of a *qualified interest* under section 2702. The IRS received comments on the notice of proposed rulemaking; however, no request for a public hearing was received so no public hearing was held. This document adopts final regulations with respect to the notice of proposed rulemaking. A summary of the principal comments received is provided below.

In addition, the final regulations clarify the regulatory rule regarding the payment period of the annuity or unitrust amount and the proration of payments for periods of less than 12 months.

Comments on Notice of Proposed Rulemaking

Under the proposed regulations, the use of a note, other debt instrument, option, or similar financial arrangement does not constitute a payment of the annuity or unitrust amount to the grantor as required by section 2702. Further, the proposed regulations provide that a retained interest is not a qualified interest under section 2702, unless the trust instrument expressly prohibits the use of notes, other debt instruments, options, or similar financial arrangements.

Commentators suggested that the regulations should permit the use of short-term notes or notes that bear interest at the section 7520 rate. This suggestion was not adopted. A note issued by the trust, regardless of the term or the interest rate, effectively defers the required payment. Thus, the issuance of a note is not the current payment of the annuity or unitrust amount not less frequently than annually as required by the statute. Under these provisions, in order to satisfy the annuity or unitrust payment obligation under section 2702(b), the annuity or unitrust amount must be paid with either cash or other assets held by the trust.

Commentators also questioned whether the prohibition on the use of notes to make the annuity or unitrust payment applies if the trustee borrows the required funds from an unrelated party. The Treasury Department and the IRS acknowledge that a trustee may borrow from an unrelated party to make the payment. However, the step transaction doctrine will be applied where a series of transactions is used to achieve a result that is inconsistent with the regulations. For example, suppose that the trustee borrows cash from a bank to make the required annuity payment and then borrows cash from the grantor to repay the bank. Similarly, suppose the grantor requests that a bank make a loan to the trust, but as a prerequisite for making the loan, the bank requires the grantor to deposit with the bank an amount equal to the loan. There is no substantive difference between these series of transactions and the situation in which a trustee issues a note for the annuity amount directly to the grantor. The final regulations have added the words "directly or indirectly" to clarify this point.

In response to a comment, the final regulations clarify that a trust instrument provision expressly prohibiting the use of notes to satisfy the annual payments is not required for trusts established before September 20, 1999. However, as provided in the regulations, a retained interest in a trust established before September 20, 1999, will not be treated as a qualified interest if notes are used after September 20, 1999, to satisfy the payment obligation, or any notes issued to satisfy the annual payment obligation on or prior to September 20, 1999, are not paid in full by December 31, 1999.

Proration of First Year's Payment

In response to comments, the regulations clarify the rules covering the period on which the annual payment must be based and the proration of the annuity or unitrust amount in the case of short periods. The final regulations make it clear that the annuity or unitrust amount need not be payable based on the taxable year of the trust. Rather, the annuity or unitrust amount may be payable annually or more frequently, (for example, monthly, quarterly, or semi-annually) based on the anniversary date of the creation of the trust. Thus, a trust providing for an annuity interest created on May 1st need not require that the trustee make payments based on the taxable year of the trust. Instead, the entire annual payment may be made by April 30th of each succeeding year of the trust term. If payment is based on the anniversary date of the trust, proration of the annuity or unitrust amount will be required only if the last period during which such amount is payable to the grantor is a short period. On the other hand, if payment is based on the taxable year of the trust, proration is required for each short taxable year of the trust during the grantor's term.

Special Analyses

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

Drafting Information

The principal author of these regulations is James F. Hogan, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 25 is amended as follows:

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Paragraph. 1. The authority citation for part 25 continues to read in part as follows:

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

Par. 2. Section 25.2702–3 is amended as follows:

1. Paragraph (b)(1)(i) is amended by revising the second and fourth sentences, and removing the last sentence.
2. Paragraph (b)(3) is revised.
3. Paragraph (b)(4) is redesignated as paragraph (b)(5).
4. A new paragraph (b)(4) is added.
5. Paragraph (c)(1)(i) is amended by revising the third and fifth sentences and removing the last sentence.
6. Paragraph (c)(3) is revised.
7. Paragraphs (c)(4) and (d)(5) are added.

The revisions and additions read as follows:

§ 25.2702–3 Qualified interests.

* * * * *

(b) * * *

(1) * * * (i) * * * The annuity amount must be payable to (or for the benefit of) the holder of the annuity

interest at least annually. * * * Issuance of a note, other debt instrument, option, or other similar financial arrangement, directly or indirectly, in satisfaction of the annuity amount does not constitute payment of the annuity amount.

* * * * *

(3) *Payment of annuity amount.* The annuity amount may be payable based on either the anniversary date of the creation of the trust or the taxable year of the trust. In either situation, the annuity amount may be paid annually or more frequently, such as semi-annually, quarterly, or monthly. If the payment is made based on the anniversary date, proration of the annuity amount is required only if the last period during which the annuity is payable to the grantor is a period of less than 12 months. If the payment is made based on the taxable year, proration of the annuity amount is required for each short taxable year of the trust during the grantor's term. The prorated amount is the annual annuity amount multiplied by a fraction, the numerator of which is the number of days in the short period and the denominator of which is 365 (366 if February 29 is a day included in the numerator).

(4) *Payment of the annuity amount in certain circumstances.* An annuity amount payable based on the anniversary date of the creation of the trust must be paid by the anniversary date. An annuity amount payable based on the taxable year of the trust may be paid after the close of the taxable year, provided the payment is made no later than the date by which the trustee is required to file the Federal income tax return of the trust for the taxable year (without regard to extensions). If the trustee reports for the taxable year pursuant to § 1.671–4(b) of this chapter, the annuity payment must be made no later than the date by which the trustee would have been required to file the Federal income tax return of the trust for the taxable year (without regard to extensions) had the trustee reported pursuant to § 1.671–4(a) of this chapter.

* * * * *

(c) * * *

(1) * * * (i) * * * The unitrust amount must be payable to (or for the benefit of) the holder of the unitrust interest at least annually. * * * Issuance of a note, other debt instrument, option, or other similar financial arrangement, directly or indirectly, in satisfaction of the unitrust amount does not constitute payment of the unitrust amount.

* * * * *

(3) *Payment of unitrust amount.* The unitrust amount may be payable based on either the anniversary date of the creation of the trust or the taxable year of the trust. In either situation, the unitrust amount may be paid annually or more frequently, such as semi-annually, quarterly, or monthly. If the payment is made based on the anniversary date, proration of the unitrust amount is required only if the last period during which the annuity is payable to the grantor is a period of less than 12 months. If the payment is made based on the taxable year, proration of the unitrust amount is required for each short taxable year of the trust during the grantor's term. The prorated amount is the annual unitrust amount multiplied by a fraction, the numerator of which is the number of days in the short period and the denominator of which is 365 (366 if February 29 is a day included in the numerator).

(4) *Payment of the unitrust amount in certain circumstances.* A unitrust amount payable based on the anniversary date of the creation of the trust must be paid by the anniversary date. A unitrust amount payable based on the taxable year of the trust may be paid after the close of the taxable year, provided the payment is made no later than the date by which the trustee is required to file the Federal income tax return of the trust for the taxable year (without regard to extensions). If the trustee reports for the taxable year pursuant to § 1.671–4(b) of this chapter, the unitrust payment must be made no later than the date by which the trustee would have been required to file the Federal income tax return of the trust for the taxable year (without regard to extensions) had the trustee reported pursuant to § 1.671–4(a) of this chapter.

(d) * * *

(5) *Use of debt obligations to satisfy the annuity or unitrust payment obligation*—(i) *In general.* In the case of a trust created on or after September 20, 1999, the trust instrument must prohibit the trustee from issuing a note, other debt instrument, option, or other similar financial arrangement in satisfaction of the annuity or unitrust payment obligation.

(ii) *Special rule in the case of a trust created prior to September 20, 1999.* In the case of a trust created prior to September 20, 1999, the interest will be treated as a qualified interest under section 2702(b) if—

(A) Notes, other debt instruments, options, or similar financial arrangements are not issued after September 20, 1999, to satisfy the annuity or unitrust payment obligation; and

(B) Any notes or any other debt instruments that were issued to satisfy the annual payment obligation on or prior to September 20, 1999, are paid in full by December 31, 1999, and any option or similar financial arrangement issued to satisfy the annual payment obligation is terminated by December 31, 1999, such that the grantor receives cash or other trust assets in satisfaction of the payment obligation. For purposes of the preceding sentence, an option will be considered terminated only if the grantor receives cash or other trust assets equal in value to the greater of the required annuity or unitrust payment plus interest computed under section 7520 of the Internal Revenue Code, or the fair market value of the option.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: August 10, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–22544 Filed 9–1–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 736

RIN 0703–AA60

Disposition of Property

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy amends this rule to reflect changes in the Disposition of Property regulation incorporating updated information on citation authorities, organizational names, and other information to assist the public awareness on rules affecting disposition of property held by the Department of the Navy.

DATES: Effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: 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 Ave SE., Suite 3000, Washington Navy Yard, DC 20374–5066. Phone (703) 604–8200.

SUPPLEMENTARY INFORMATION: This amended rule provides the public updated information on changes in organizational names and nomenclature related to disposition of property. Additionally, an internet address is included for public access to an

electronic copy of the Defense Material Disposition Manual. 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. 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 of 32 CFR Part 736 or the instructions 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 Ave 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.

Executive Order 13132, Federalism

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will have little or no direct effect on States or local governments.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR Part 1320).

List of Subjects in 32 CFR Part 736

Government property, Surplus Government property.

For the reasons set forth in the preamble, amend part 736 of title 32 of the Code of Federal Regulations as follows:

PART 736—DISPOSITION OF PROPERTY

1. The authority citation for part 736 is revised to read as follows:

Secs. 5031, 6011, 70A Stat. 278, as amended; 10 U.S.C. 5031, 6011. Interpret or apply R.S. 3618, 3678, 3709, 38 Stat. 1084, 44 Stat. 605, 49 Stat. 885, 53 Stat. 811, 54 Stat. 396, 57 Stat. 380, 59 Stat. 260, sec. 27, 60 Stat. 856, sec. 5, 60 Stat. 998, sec. 4, 62 Stat. 286, secs. 7(c), 8(a–b), 62 Stat. 452, 63 Stat. 377, 64 Stat. 1109, 65 Stat. 645, 68 Stat. 832, sec. 501(c)(3), 68A Stat. 163, secs. 2481, 2541, 2542, 2571–2574, 2662, 2667, 6155, 6156, 6901, 7227, 7228, 7230, 7304–7308, 7541–7547, 7601–7604, 70A Stat. 141, sec. 5003, 72 Stat. 1252, 72 Stat. 1793, sec. 616, 73 Stat. 381, as amended; 31 U.S.C. 487, 628, 41 U.S.C. 5, 31 U.S.C. 686, 686a, 40 U.S.C. 304a, 50 U.S.C. 98–98h, 22 U.S.C. 521, 44 U.S. C. 366–380, 42 U.S.C. 1572, 24 U.S.C. 37, 20 U.S.C. 77d, 15 U.S.C. 328, 49 U.S.C. 1156(c), 1157(a–b), 40 U.S.C. 471 *et seq.*, 42 U.S.C. 1855–1855g, 22 U.S.C. 1611–1613c, 1750 *et seq.*, 26 U.S.C. 501(c)(3), 10 U.S.C. 2481, 2541, 2542, 2571–2574, 2662, 2667, 6155, 6156, 6901, 7227, 7228, 7230, 7304–7308, 7541–7547, 7601–7604, 38 U.S.C. 5003, 42 U.S.C. 1891–1893, 40 U.S.C. 483a, E.O. 10885, 25 FR 8471, 40 U.S.C. 471; 40 U.S.C. 486; 10 U.S.C. 2576; 33 U.S.C. 1401; Pub. L. No. 96–41 (50 U.S.C. 98); Pub. L. No. 93–288 (42 U.S.C. 5121).

2. In § 736.1, revise the last sentence of the introductory paragraph and paragraph (c) to read as follows:

§ 736.1 General.

* * * In general, property of the Department of the Navy, which becomes excess to its needs, may not be disposed of to the general public until it has been determined to be surplus after screening such property with the other military departments of the Department of Defense and all other agencies of the Government, and after it has been offered for donation to educational institutions, and law enforcement and marine research activities.

* * * * *

(c) The Department of Defense Material Disposition Manual and directives issued by the Department of the Navy cover the disposition of all property of the Department including disposition under the Federal Property Act. The Defense Material Disposition Manual is available on the internet at www.drms.dla.mil. Section XXIV of Navy Procurement Directives contains similar information applicable to the disposition of contractor inventory. These publications are available for inspection at the offices of the Commandants of the several Naval Districts; and at various Navy and Marine Corps installations.

3. In § 736.3, revise paragraph (b)(1) to read as follows:

§ 736.3 Sale of personal property.

* * * * *

(b) * * *

(1) The Department of Defense has a contact point for any person interested in purchasing surplus Department of Defense personal property within the United States. The contact point is the Defense Surplus Bidders Control Office, Defense Reutilization and Marketing Office, Federal Center Building, Battle Creek, Michigan. This office maintains a single bidders list for all military departments. The list is arranged to show each person's buying interests, both geographically and with respect to categories of property. The categories of property (together with an application blank) are listed in a pamphlet "How to Buy Surplus Personal Property From The Department of Defense," prepared by the Defense Reutilization and Marketing Office, Defense Logistics Agency, Battle Creek, Michigan.

* * * * *

4. Amend § 736.5 as follows:

a. In paragraphs (d) and (f)(2) remove the words "Naval Ship Systems Command" and add, in their place, the words "Naval Sea Systems Command".

b. In paragraph (f)(2) remove the words "Defense Disposal Manual" and add, in their place, the words "Defense Material Disposition Manual".

c. In paragraph (h) remove the words "act of December 31, 1970 (42 U.S.C. 4401–4485)" and add, in their place, the words "Disaster Relief Act of 1974 (Pub. L. No. 93–288)" and remove the words "Director of the Office of Emergency Preparedness" and add, in their place, the words "Federal Emergency Management Agency".

d. Revise paragraph (e) to read as follows:

§ 736.5 Disposition of real and personal property under special statutory authority.

* * * * *

(e) Exchange of property for replacement purposes. Under the authority of section 201(c) of the Federal Property Act (40 U.S.C. 481(c)) and consistent with Department of Defense implementing regulations, DOD 4140.1–R and the Defense Federal Acquisition Regulation Supplement, the Department of the Navy is authorized in the acquisition of new equipment, to exchange similar items which are not excess to its needs, and apply the exchange allowance in whole or part payment for the items purchased.

* * * * *

Dated: August 24, 2000.

C.G. Carlson,

Major, U.S. Marine Corps, Alternate Federal Register Liaison Officer.

[FR Doc. 00–22445 Filed 9–1–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 770

RIN 0703–AA63

Rules Limiting Public Access to Particular Installations

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule sets forth amended regulations governing entry upon installations with limited public access under the Department of the Navy jurisdiction. It is intended that this amendment will apprise members of the public of the rules governing access on these installations.

DATES: Effective September 5, 2000.

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

FOR FURTHER INFORMATION CONTACT: 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 Ave SE., Suite 3000, Washington Navy Yard, DC 20374–5066. Phone (703) 604–8200.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR part 770, subparts A, B, F, and G. This amendment is the result of changes to regulations limiting public access to particular installations under the jurisdiction of the Department of the Navy. 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. 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 of 32 CFR part 770, subparts A, B, F, and G, or the instructions on which they are 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 Ave 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.

Executive Order 13132, Federalism

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will have little or no direct effect on States or local governments.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR Part 1320).

List of Subjects in 32 CFR Part 770

Armed forces, Endangered and threatened species, Federal buildings and facilities, Fish, Government property, Government property management, National defense, Restricted access areas, Security measures, Wildlife.

For the reasons set forth in the preamble, the Department of the Navy amends 32 CFR part 770 as follows:

PART 770—RULES LIMITING PUBLIC ACCESS TO PARTICULAR INSTALLATIONS

1. The authority citation for part 770 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714.

2.–3. In § 770.2, revise paragraphs (b)(1), (c) and (d)(2) to read as follows:

§ 770.2 Licenses.

* * * * *

(b) * * *

(1) The privilege card may be purchased from the Natural Resources and Environmental Affairs Branch, Building 5–9, Marine Corps Base, Quantico, VA.

* * * * *

(c) All hunters must obtain a Base hunting permit, and a parking permit, if applicable, from the Game Check Station, Building 5–9 Station (located at the intersection of Russell Road and MCB–1) for each day of hunting. The hunting permit must be carried by the hunter and the parking permit must be displayed on the left dashboard of parked vehicles. The hunting and parking permits must be returned within one hour after either sunset or the hour hunting is secured on holidays or during special season.

(d) * * *

(2) Attendance at a safety lecture given daily except Sunday during the hunting season given at the Game Check Station. The lectures commence at the times posted in the Annual Hunting Bulletin and are posted on all base bulletin boards;

* * * * *

4. In § 770.3, revise paragraphs (a), (b), and (c)(1) through (3) and remove paragraphs (c)(4) and (5) to read as follows:

§ 770.3 Fishing regulations.

(a) All persons possessing the proper state license and Base permit are permitted to fish in the areas designated by the Annual Fishing Regulations on Marine Corps Base, Quantico, VA, on any authorized fishing day. A Base Fishing Privilege Card is required for all persons aged 16 to 65.

(b) Fishing is permitted on all waters within the boundaries of Marine Corps Base, Quantico, VA, unless otherwise posted, under the conditions and restrictions and during the periods provided by Marine Corps Base, Quantico, VA. Information regarding specific regulations for each fishing area must be obtained from the Natural Resources and Environmental Affairs Branch, Building 5–9 prior to use of Base fishing facilities.

(c) * * *

(1) No trout lines are permitted in Marine Corps Base waters;

(2) No Large Mouth Bass will be taken, creeled or possessed in a slot limit of 12–15 inches in length. All Large Mouth Bass within this slot will be immediately returned to the water;

(3) No Striped Bass will be taken, creeled or possessed under the size of twenty (20) inches in length. All Striped Bass under this size will be immediately returned to the water.

5. Revise § 770.4 to read as follows:

§ 770.4 Hunting regulations.

All persons possessing the proper State, Federal and Base licenses and permits are permitted to hunt in the areas designated daily by the Annual Hunting Bulletin on Marine Corps Base, Quantico, VA, on any authorized hunting day. In addition, a minimum of fifteen percent of the daily hunting spaces will be reserved to civilians on

a first come, first served basis until 0600 on each hunting day, at which time, the Game Check Station may fill vacancies from any authorized persons waiting to hunt.

6. In § 770.5, revise paragraphs (a), (b), and (c) to read as follows:

§ 770.5 Safety regulations.

(a) Hunting is not permitted within 200 yards of the following: Ammunition dumps, built-up areas, rifle or pistol ranges, dwelling or other occupied structures, and areas designated by the Annual Hunting Bulletin as recreation areas.

(b) From the end of the special archery season until the end of the regular firearms winter hunting season, except for duck hunters in approved blinds, hunters will wear an outer garment with at least two square foot of blaze orange visible both front and back above the waist and a blaze orange cap while hunting, or while in the woods for any reason, during the hours that hunting is authorized. Any person traveling on foot in or adjacent to an area open for hunting will comply with this requirement.

(c) Weapons will be unloaded while being transported in vehicles, and will be left in vehicles by personnel checking in or out at the Game Check Station. Weapons will not be discharged from vehicles, or within 200 yards of hard surfaced roads.

* * * * *

§ 770.6 [Amended]

7. Amend § 770.6, as follows:

a. In paragraph (b), remove the number "16" and add in its place the number "18," and remove the number "18" contained in the parenthesis and add in its place the number "21."

b. In paragraph (c), remove the words "beaver or bald eagles" and add in their place, the word "wildlife," and remove the word "clearance" and add in its place the words "Walking Pass" each time it appears.

c. Revise paragraph (a) and add paragraphs (f) and (g) to read as follows:

§ 770.6 Restrictions.

(a) There will be no hunting on Christmas Eve, Christmas Day, New Years Day, or after 1200 on Thanksgiving Day.

* * * * *

(f) There will be no use of a muzzleloader or slug shotgun after obtaining the daily or yearly game bag limits.

(g) There will be no possession or use of drugs or alcohol while checked out to hunt.

§ 770.7 [Amended]

8. In § 770.7 remove paragraphs (c)(3), (4) and (5) and revise the section title, and paragraphs (a), (b), and (c)(1) and (2) to read as follows:

§ 770.7 Violations and environmental regulations.

* * * * *

(a) The Marine Corps Base Game Wardens are Federal Game Wardens. They have authority to issue summons to appear in Federal court for game violations.

(b) Offenders in violation of a Federal or State hunting or fishing laws will be referred to a Federal court.

(c) * * *

(1) The Base Game Warden shall have the authority to temporarily suspend hunting and fishing privileges.

(2) Suspensions of hunting and fishing privileges will be outlined in the Annual Fish and Wildlife Procedures Manual.

* * * * *

9. In § 770.8, revise the last sentence to read as follows:

§ 770.8 Reports.

* * *All other game, not requiring a tag, killed on the Reservation will be immediately reported to the Game Warden when checking out at the end of a hunt.

10. Revise § 770.9 to read as follows:

§ 770.9 Miscellaneous.

Refer to the Annual Fishing and Hunting Bulletins that will cover any annual miscellaneous changes.

11. The subpart heading is revised to read as follows:

Subpart B—Base Entry Regulations for Naval Submarine Base, Bangor, Silverdale, Washington

12. The authority citation for subpart B is revised to read as follows:

Authority: 50 U.S.C. 797; DoDDir. 5200.8 of April 25, 1991; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714.

13. Revise the last sentence of section 770.18 to read as follows:

§ 770.18 Entry restrictions.

* * * See, 18 U.S.C. 1382; the Internal Security Act of 1950, Section 21 (50 U.S.C. 797); Department of Defense Directive 5200.8 of 25 April 1991; Secretary of the Navy Instruction 5511.36A of 21 July 1992.

14. In § 770.19, Revise paragraph (a) to read as follows:

§ 770.19 Entry procedures.

(a) Any person or group of persons desiring the advance consent of the Commanding Officer, SUBASE Bangor or his authorized representative shall, in writing, submit a request to the Commanding Officer, Naval Submarine Base, Bangor, 1100 Hunley Road, Silverdale, WA 98315.

* * * * *

15. In § 770.20 revise the undesignated citation following paragraph (a) and paragraph (b) to read as follows:

§ 770.20 Violations.

(a) * * *

Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $5,000 or imprisoned not more than six months or both.

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed $5,000 or imprisonment for not more than one (1) year or both as provided in 50 U.S.C. 797.

16. Revise subpart F, part 770 to read as follows:

Subpart F—Base Entry Regulations for Puget Sound Naval Shipyard, Bremerton, Washington

Sec.

Subpart F—Base Entry Regulations for Puget Sound Naval Shipyard, Bremerton, Washington

Authority: 5 U.S.C. 301; 10 U.S.C. 6011; 50 U.S.C. 797; DoD Directive 5200.8 of April 25, 1991; SECNAVINST 5511.36A of July 21, 1992; OPNAVINST 5530.14C of December 10, 1998; 32 CFR 700.702; 32 CFR 700.714.

§ 770.47 Purpose.

To promulgate regulations and procedures governing entry upon Puget Sound Naval Shipyard, and to prevent the interruption of the functions and operations of Puget Sound Naval Shipyard by the presence of any unauthorized person within the boundaries of the Puget Sound Naval Shipyard.

§ 770.48 Definition.

For the purpose of this subpart, Puget Sound Shipyard shall include that area of land, whether or not fenced or covered by water, in Kitsap County in the State of Washington under the operational control of the Commander,

Puget Sound Naval Shipyard or any tenant command. This includes all such areas regardless of whether the areas are being used for purely military purposes, for housing, for support purposes, or for any other purpose by a naval command or other federal agency.

§ 770.49 Background.

(a) Puget Sound Naval Shipyard is a major naval ship repair facility, with operational requirements to complete repairs and overhaul of conventionally powered and nuclear powered naval vessels. It is vital to national defense that the operation and use of the shipyard be continued without interruption. Additionally, most of Puget Sound Naval Shipyard is dedicated to heavy industrial activity where potentially hazardous conditions exist.

(b) For prevention of the interruption of the stated use of Puget Sound Naval Shipyard and prevention of injury to any unsupervised or unauthorized person as a consequence of the hazardous conditions that exist, as well as for other reasons, it is essential to restrict entry upon Puget Sound Naval Shipyard to authorized persons only.

§ 770.50 Entry restrictions.

Except for military personnel and civilian employees of the United States in the performance of their official duties, entry upon Puget Sound Naval Shipyard, or remaining thereon by any person for any purpose without advance consent of the Commander, Puget Sound Naval Shipyard or his/her authorized representative, is prohibited.

§ 770.51 Entry procedures.

(a) Any person or group of persons desiring the advance consent of the Commander, Puget Sound Naval Shipyard, or his authorized representative, shall, in writing, submit a request to the Commander, Puget Sound Naval Shipyard, at the following address: Commander, Puget Sound Naval Shipyard, 1400 Farragut Avenue, Bremerton, WA 98314–5001.

§ 770.52 Violations.

(a) Any person entering or remaining on Puget Sound Naval Shipyard, without the consent of the Commander, Puget Sound Naval Shipyard, or an authorized representative, shall be subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part:

Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500.00 or imprisoned not more than six months or both.

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed $5000.00 or imprisonment for not more than one year or both as provided in 50 U.S.C. 797.

17.–18. The authority citation for subpart G, part 770 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 6011; 50 U.S.C. 797; DoD Directive 5200.8 of April 25, 1991; SECNAVINST 5511.36A of July 21, 1992; NAVCOMSYSCOMINST 5510.2B of April 18, 1990; 32 CFR 700.702; 32 CFR 700.714.

19. In § 770.55 remove the number "830" contained in the parenthetical and add, in its place, the number "1700".

20. In § 770.57 remove the number "830" contained in the parenthetical and add, in its place, the number "1700".

Dated: August 23, 2000.

C.G. Carlson,

Major, U.S. Marine Corps,, Alternate Federal Register Liaison Officer.

[FR Doc. 00–22442 Filed 9–1–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 09–00–010]

RIN 2115–AG01

Inland Waterways Navigation Regulations; Ports and Waterways Safety

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: By this direct final rule, the Coast Guard is removing an inland waterway navigation regulation that sets time limit requirements and requires Captain of the Port approval before using the Portage River and Lily Pond Harbor in Michigan as harbors of refuge. The elimination of this rule is necessary because Portage River and Lily Pond Harbor are no longer used as harbors of safe refugee.

DATES: This rule is effective on December 4, 2000, unless a written adverse comment, or written notice of intent to submit an adverse comment, reaches Marine Safety Office Duluth by November 6, 2000. If an adverse comment, or notice of intent to submit an adverse comment, is received, the Coast Guard will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**. Comments must be received on or before November 6, 2000.

ADDRESSES: Comments may be mailed to the United States Coast Guard, Marine Safety Office Duluth, 600 South Lake Avenue, Duluth, Minnesota 55802, or may be delivered to the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Marine Safety Office Duluth maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Marine Safety Office Duluth, 600 South Lake Avenue, Duluth, Minnesota, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Lieutenant Randy Wagner, United States Coast Guard, Marine Safety Office Duluth, Minnesota telephone (218) 720–5286.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments for or against this rule. Persons submitting comments should include names and addresses, identify the rulemaking [CGD09–00–010] and the specific section of this rule to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the address under **ADDRESSES.** Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcards or envelopes.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no adverse comments are anticipated. If no adverse comment or any written notice of intent to submit an adverse comment is received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, the Coast Guard will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives a written adverse comment or

written notice of intent to submit adverse comment, the Coast Guard will publish a document in the **Federal Register** announcing withdrawal of all or part of this direct final rule. If an adverse comment applies to only part of this rule (e.g. an amendment, a section or a paragraph) and it is possible to remove that part without defeating the purpose of the rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comment was received. The part of this rule that was the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, the Coast Guard will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

The Coast Guard is removing an inland waterway navigation regulation that sets time limit requirements and requires Captain of the Port approval before using the Portage River and Lily Pond Harbor in Michigan as harbors of refuge. The elimination of this rule is necessary because Portage River and Lily Pond Harbor are no longer used as harbors of safe refugee. This change is being made to reduce the regulatory burden the Coast Guard imposes on the shipping community.

It has been years since lake traffic has used the locations addressed as Harbors of Safe Refuge to escape rough weather. In fact, only one lake vessel in current operation is small enough to moor at either location. The property is owned and maintained by the Army Corps of Engineers (ACOE) and the will continue to maintain and use them for storage of their operational materials. This recommendation came from information provided by the ACOE's Area Engineer, the ACOE District office, Lake Carriers Association, and the Great Lakes Navigation Committee.

Discussion of Rules

The Coast Guard is removing an inland waterway navigation regulation that sets time limit requirements and requires Captain of the Port approval before using the Portage River and Lily Pond Harbor in Michigan as harbors of refuge. The elimination of this rule is necessary because Portage River and Lily Pond Harbor are no longer used as harbors of safe refugee. This change is being made to eliminate the need for Captain of the Port approval, thereby reducing the regulatory burden the Coast Guard imposes on the shipping community.

The rule in 162.115(b) is no longer applicable, because the condition of neither harbor allows a vessel with a draft of more than 10 feet to enter. It has been years since lake traffic has used the locations addressed as Harbors of Safe Refuge to escape rough weather. In fact, only one lake vessel in current operation is small enough to moor at either location. The property is owned and maintained by the Army Corps of Engineers (ACOE) and they will continue to maintain and use them for storage of their operational materials. This recommendation came from information provided by the ACOE's Area Engineer, the ACOE District office, Lake Carriers Association, and the Great Lakes Navigation Committee.

The designation of these locations as Harbors of Safe Refuge will still remain in Coast Pilot 6 and on the navigation charts, but the time limit and reporting requirement should be removed from the regulation. Therefore, the Coast Guard is removing 165.211 (b).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulatory change imposes no burdens on the public, because it eliminates the need for vessels to obtain federal grant approval before seeking refuge in adverse weather in Portage River harbor or Lily Pond harbor.

Small Entities

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

This rule simply eliminates the need for a vessel to obtain federal grant approval before seeking refuge from adverse weather in two Lake Superior ports. It imposes no cost to any small entity. Therefore, the Coast Guard certifies under 5 U.S.C 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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 (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation because it disestablishes a regulated navigation area. A "Categorical Exclusion Determination" is not required.

List of Subjects in 33 CFR Part 162

Navigation (water), Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 162.115 as follows:

PART 162—[AMENDED]

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46.

§ 162.115 [REVISED]

2. Section 162.115 is amended by removing paragraph (b) and removing the designator to paragraph (a).

Dated: August 18, 2000.

G.S. Cope,

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

[FR Doc. 00–22567 Filed 9–1–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–116–1–7437a: FRL–6862–5]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Transfer Operations, Loading and Unloading of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC) Transfer Operations, specifically, the loading and unloading of VOCs from gasoline terminals and bulk plants in the ozone nonattainment areas and in the eastern half of Texas. The EPA is approving these revisions to regulate emissions of VOCs in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on November 6, 2000 without further notice, unless EPA receives adverse comment by October 5, 2000. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION:

Table of Contents

Throughout this document "we," "us," and "our" means EPA.

1. What Action Is EPA Taking?

On August 9, 1999, the Governor of Texas submitted the Chapter 115, "Control of Air Pollution From Volatile Organic Compounds," as a revision to the SIP. The August 9, 1999, SIP submittal concerned loading and unloading of VOCs.

On November 29, 1999, the Governor of Texas submitted the Chapter 115, "Control of Air Pollution From Volatile Organic Compounds," as a revision to the SIP. The November 29, 1999, SIP submittal concerned loading and unloading of gasoline at gasoline terminals and gasoline bulk plants.

In this rule making we are taking two separate actions: (1) We are specifically approving revisions to sections 115.211 –115.217 and section 115.219; and (2) We are specifically approving revisions to section 115.211 concerning emission specifications, section 115.212 concerning control requirements, and section 115.219 concerning counties and compliance schedules. We are approving revisions to the Texas SIP concerning control of VOC emissions from loading and unloading of gasoline at gasoline terminals and gasoline bulk plants in the Houston/Galveston (H/G), Beaumont/Port Arthur (B/PA), Dallas/Fort Worth (D/FW), and El Paso (EP) ozone nonattainment areas, and in 95 counties in the eastern half of Texas. The approval of these rules means that we agree Texas is implementing RACT on these source categories as required by section 182(b)(2)(A) and (C), and section 183 of the Act. For more information on the SIP revision and EPA's evaluation, please refer to our Technical Support Document (TSD) dated May 2000.

2. What Action Are We Not Taking in This Document?

In this document we are not acting on revisions to sections 115.221–115.227 and section 115.229 concerning filling of gasoline storage vessels (Stage I) for motor vehicle fuel dispensing facilities.

In this document we are not acting on revisions to sections 115.234–115.237 and section 115.239 concerning control of VOC leaks from transport vessels.

3. Why Do We Regulate VOCs?

Oxygen in the atmosphere reacts with VOCs and Oxides of Nitrogen to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It also can worsen bronchitis and asthma. Exposure to ozone can also reduce lung capacity in healthy adults.

4. Where Can I Find EPA Guidelines on Gasoline Transfer Operations?

You can find our guidelines on gasoline bulk plants in the document number EPA–450/2–77–035, "Control of Volatile Organic Emissions from Bulk Gasoline Plants," December 1977.

5. Where Else Can I Find EPA Guidelines on Gasoline Related Operations?

You can also find additional guidelines on gasoline related

operations in the following EPA documents:

(1) "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals," EPA–450/2–77–026,

(2) "Hydrocarbon Control Strategies for Gasoline Marketing Operations," EPA–450/3–78–017, and

(3) "Control of Volatile Organic Compounds from Storage of Petroleum Liquids in Fixed Roof Tanks," EPA–450/2–77–036.

6. What Are the Gasoline Bulk Transfer Rule Changes?

The revisions to Chapter 115 will modify the gasoline loading and unloading rule by: (1) adding the requirements in the urban ozone nonattainment areas to 95 counties in the eastern half of Texas; (2) deleting the concentration based emission specification (milligram per liter) for gasoline bulk plants in the H/G, D/FW, and EP ozone nonattainment areas, and in 95 counties in the eastern half of Texas; and (3) revising the "loading lockout" requirements for gasoline terminals in the H/G, D/FW, and EP ozone nonattainment areas.

For detailed evaluation of the specific provisions of the gasoline bulk transfer rule changes, please see page 2 of our TSD dated May 2000.

7. Will These Changes Relax the SIP?

No, these changes will not relax the SIP. These rule changes will make it: (1) easier to quantify emissions, (2) enforce a limitation that is more practical, and (3) simpler for the operator to relate to. We prefer having a regulation that incorporates operating parameters instead of a regulation that uses a concentration based emission limit.

Our Regional office developed a Federal Implementation Plan (FIP) (40 CFR 52.2285 and 52.2286) for Bexar County, and certain counties in east Texas, in the mid 1970s. The FIP applied to sources with storage capacities greater than 1000 gallons. These Texas state rules that we are approving as a revision to the Texas SIP set exemption levels based on throughput. We are of the opinion that the emission reductions resulting from implementation of these rules are at least equivalent to the current FIP requirements. Upon the effective date of our approval of section 115.219, as a part of the Texas SIP, affected sources will only need to comply with the state's SIP-approved VOC rules and not our FIP VOC rule. The affected sources are large stationary vessels and transfer facilities (Gasoline Bulk Plants with a throughput greater than or equal to 4000 gallons per day, or Land based loading/unloading operations with a throughput greater than or equal to 20,000 gallons per day).

The FIP requirements will remain in place for gasoline transfer facilities, bulk plants and smaller sources (storage capacity greater than or equal to 1000 gallons and: (a) Gasoline Bulk Plants with a throughput less than 4000 gallons per day, or (b) Land based loading/unloading operations with a throughput less than 20,000 gallons per day).

8. Why Do These Changes Not Relax the SIP?

These changes will not relax the SIP for the following reasons: (1) section 115.212(a)(5)(A) will still require using a vapor balance system to recycle gasoline vapors back to the storage tank or using a 90 percent efficient add-on control device for such facilities, (2) section 115.212(a)(5)(A) will continue to satisfy our RACT requirement, (3) we do not consider the "loading lockout" as RACT, and (4) Texas had not taken any emission reduction credits for adoption of the "loading lockout" requirements in its 15% Rate-of-Progress (ROP) SIPs, post 1996–ROP SIPs, and attainment demonstration SIPs for the four ozone nonattainment areas.

Texas' experience shows that the "loading lockout" instrumentation does not work well in practice. For example, they found out that the "loading lockout" instrumentation could allow loading of gasoline to continue even if the hose is damaged or improperly connected. A damaged hose or improper connections can cause more VOC emissions into the air. Therefore, this instrumentation is not worth the expense.

For reasons stated above, these changes do not relax the SIP. We are agreeing with Texas on these rule changes, and are approving the rule changes.

9. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants. Thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time. It has been estimated that 60 percent of Americans live in nonattainment areas.

10. What Is a Reasonably Available Control Technology (RACT)?

Section 172(c)(1) of the Act contains general requirements for States to implement RACT in areas that do not meet the NAAQS. Section 182(b)(2) of the Act contains more specific requirements for moderate and above ozone nonattainment areas. A related requirement of the Act in 182(b)(2)(C)(3) calls for States to implement RACT on all gasoline dispensing facilities. Texas submitted its rules for control of VOCs from loading and unloading of gasoline at the gasoline bulk plants and terminals to us on June 8, 1992, and we approved them as RACT on March 7, 1995 (60 FR 12438). We approved the July 12, 1995 revisions, the March 13, 1996 revisions, and the August 9, 1996 revisions to these rules on January 26, 1999 (64 FR 3841).

Sections 3 and 4 of this action name the titles of EPA's documents for control of emissions from gasoline related operations.

11. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

12. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request

that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the Code of Federal Regulations at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations that we approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

13. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

14. What Areas in Texas Will These Rules Affect?

These rules will affect the H/G, B/PA, D/FW, and EP ozone nonattainment areas. The H/G area is classified as severe ozone nonattainment and includes the following counties: Brazoria, Chambers, Fort Bend, Harris, Galveston, Liberty, Montgomery, and Waller. The B/PA is classified as moderate ozone nonattainment area and includes the following counties: Hardin, Jefferson, and Orange. The D/FW area is classified as serious ozone nonattainment and includes the following counties: Collin, Dallas, Denton, and Tarrant. The El Paso is classified as serious ozone nonattainment and includes the following county: El Paso.

These rules will also affect the 95 counties in the eastern half of Texas. These 95 counties in the eastern half of Texas are: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

If you are in one of these counties or one of these nonattainment areas, you need to refer to these rules to find out if and how these rules will affect you.

Final Action

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the **PROPOSED RULES** section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on November 6, 2000 without further notice unless we receive adverse comment by October 5, 2000. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Executive 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612, "Federalism," and Executive Order 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 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 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. The 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 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, 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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. 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 OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not 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 November 6, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Gasoline, Intergovernmental relations, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 3, 2000.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is amended in paragraph (c) under Chapter 115, Subchapter C, by removing the entry for section 115.211 to 115.219 and adding entries for sections 115.211, 115.212, and 115.219 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State adoption date	EPA approval date	Explanation
*	*	*	*	*
Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds				
*	*	*	*	*
Subchapter C—Volatile Organic Compounds Transfer Operations				
Section 115.211	Emission Specifications.	November 10, 1999	September 5, 2000	Ref 52.2299(c)(104).
Section 115.212	Control Requirements.	November 10, 1999	September 5, 2000	Ref 52.2299(c)(104),52.2270(105)(i)(K).
Section 115.219	Counties and Compliance.	November 10, 1999	September 5, 2000	Ref 52.2299(c)(104),52.2270(105)(i)(K).
*	*	*	*	*

[FR Doc. 00–22514 Filed 9–1–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ36–2–213, FRL–6860–1]

Approval and Promulgation of Implementation Plans; New Jersey; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing approval of New Jersey's State Implementation Plan (SIP) revision for ozone. This SIP revision relates to New Jersey's portion of the Ozone Transport Commission's September 27, 1994 Memorandum of Understanding, which includes a regional nitrogen oxides budget and allowance (NO_X Budget) trading program that will significantly reduce NO_X emissions generated within the Ozone Transport Region, which includes the State of New Jersey. EPA is approving New Jersey's regulations, which implement Phase II and Phase III of the NO_X Budget Trading Program, since they reduce NO_X emissions and help achieve the national ambient air quality standard for ozone.

DATES: This rule is effective on October 5, 2000.

ADDRESSES: Copies of the State submittal and supporting documents are available for inspection during normal business hours, at the following addresses:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4014.

SUPPLEMENTARY INFORMATION:

Overview

The EPA is approving the New Jersey Department of Environmental Protection's (New Jersey's) Nitrogen Oxides Budget and Allowance (NO_X Budget) Trading Program for 1999, 2000, 2001, 2002 and 2003 and thereafter.

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

EPA's Action

What Action Is EPA Approving?

The EPA is approving a revision to New Jersey's Ozone State Implementation Plan (SIP) which New Jersey submitted on April 26, 1999 and supplemented on July 31, 2000. This SIP revision relates to New Jersey's NO_X Budget Trading Program. New Jersey's regulations which implement the NO_X Budget Trading Program are:

- New Subchapter 31, "NO_X Budget Program"
- Guidance for Implementation of Emissions Monitoring Requirements for the NO_X Budget Program, January 28, 1997
- NO_X Budget Program Monitoring Certification and Reporting Requirements, July 3, 1997
- Electronic Data Reporting, Acid Rain Program/NO_X Budget Program-Version 2.0, July 3, 1997
- Measurement Protocol for Commercial, Industrial and Residential Facilities, April 28, 1993.

New Jersey also amended Subchapter 3, "Civil administrative penalties for violation of rules adopted pursuant to the Act" to implement the NO_X Budget Trading Programs. Subchapter 3 contains the mechanisms to enforce the NO_X Budget Trading Program, which are acceptable to EPA. EPA is not incorporating Subchapter 3 because EPA can take enforcement actions related to SIP penalties under its own corresponding federal regulations.

EPA will propose action on other components of the July 31, 2000 SIP revision in a separate future rulemaking.

Why Is EPA Approving This Action?

EPA is approving this action to:

- Fulfill New Jersey's and EPA's requirements under the Clean Air Act (the Act),
- Make New Jersey's NO_X Budget Trading Program federally-enforceable, and
- Make the significant NO_X emission reductions available for credit toward the attainment SIP.

When Did EPA Propose To Approve New Jersey's Program?

On October 14, 1999, EPA published in the **Federal Register** (64 FR 55662) a Proposed Rulemaking conditioning approval of New Jersey's regulations as a SIP revision and providing for a 30-day public comment period, which ended on November 15, 1999.

What Did EPA Propose?

In the October 14, 1999 Proposed Rulemaking, EPA proposed to condition its approval of New Jersey's NO_X Budget Trading Program on New Jersey including provisions for defining a violation and determining the number of days of a violation should a source not hold enough allowances as of the allowance transfer deadline. EPA also proposed a full approval of New Jersey's NO_X Budget Trading Program if New Jersey corrected the deficiency before a final rulemaking action, and the correction is consistent with EPA's findings as discussed in the Proposed Rulemaking. EPA said it will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the April 26, 1999 submittal.

New Jersey proposed provisions on August 2, 1999 and adopted provisions in Subchapter 3 on July 31, 2000 which corrected the deficiency for defining a violation and determining the number of days of a violation. New Jersey submitted the amended provisions to EPA as a supplement to the April 26, 1999 SIP submittal on July 31, 2000. The amended provisions in Subchapter 3 are consistent with EPA's guidance.

What Were the Public's Comments on EPA's Proposal?

EPA received no public comments regarding the October 14, 1999 Proposed Rulemaking.

What Is the Ozone Transport Commission's Memorandum of Understanding?

The Ozone Transport Commission (OTC) adopted a Memorandum of Understanding (MOU) on September 27, 1994, which committed the signatory states to the development and proposal of a region-wide reduction in NO_X emissions, with one phase of reductions by 1999 and another phase of reductions by 2003. The Act required installation of reasonable available control technology (RACT) to reduce NO_X emissions by May of 1995 (regarded as Phase I). The OTC MOU obligated further reductions in NO_X emissions by 1999 (known as Phase II) and by 2003 (known as Phase III).

Where Is Additional Information Available on EPA's Action?

A detailed discussion of this program is available in the October 14, 1999 Proposed Rulemaking (64 FR 55662). A Technical Support Document, prepared in support of the proposed rulemaking, contains the full description of New Jersey's submittal and EPA's evaluation. A copy of the Technical Support Document is available upon request from the EPA Regional Office listed in the **ADDRESSES** section.

Conclusion

EPA is approving New Jersey's program which implements the Ozone Transport Commission's September 27, 1994 Memorandum of Understanding (Phase II and Phase III). The EPA is approving, as part of the SIP, the new regulation Subchapter 31, "NO_X Budget Program," submitted by New Jersey on April 26, 1999, with supporting documentation submitted on July 31, 2000.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (Executive Order) 12866, entitled "Regulatory Planning and Review."

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, 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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments 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 and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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 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 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

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

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

Submission to Congress and the Comptroller General

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

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this final rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 21, 2000.

William J. Muszynski, P.E.,

Deputy Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(69) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(69) A revision to the State Implementation Plan submitted on April 26, 1999 and supplemented on July 31, 2000 by the New Jersey Department of Environmental Protection that establishes the NO_X Budget Trading Program.

(i) Incorporation by reference:

(A) Title 7, Chapter 27, Subchapter 31, of the New Jersey Administrative code entitled "NO_X Budget Program" adopted on June 17, 1998, and effective on July 20, 1998.

(ii) Additional information.

(A) Letter from the New Jersey Department of Environmental Protection dated April 26, 1999, submitting the NO_X Budget Trading Program as a revision to the New Jersey State Implementation Plan for ozone.

(B) Letter from the New Jersey Department of Environmental Protection dated July 29, 1999, committing to

correcting the violation definition deficiency within one year of EPA's final action.

(C) Letter from the New Jersey Department of Environmental Protection dated July 31, 2000, supplementing the April 26, 1999 SIP submittal with the amended violation provisions.

(D) Guidance for Implementation of Emissions Monitoring Requirements for the NO_X Budget Program, dated January 28, 1997.

(E) NO_X Budget Program Monitoring Certification and Reporting Requirements, dated July 3, 1997.

(F) Electronic Data Reporting, Acid Rain/NO_X Budget Program, dated July 3, 1997.

(G) Measurement Protocol for Commercial, Industrial and Residential Facilities, April 28, 1993.

3. Section 52.1605 is amended by adding a new entry for Subchapter 31 under the heading "Title 7, Chapter 27," to the table, in numerical order to read as follows:

§ 52.1605 EPA—approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * * * * *			
Title 7, Chapter 27			
* * * * * * * *			
Subchapter 31, "NO_X Budget Program.".	July 20, 1998	September 5, 2000, [Insert FR page citation].	Approval of NO_X Budget Trading Program for 1999, 2000, 2001, 2002, 2003 and thereafter.
* * * * * * * *			

[FR Doc. 00–22525 Filed 9–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241–0241a; FRL–6853–7]

Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Sacramento Metropolitan Air Quality Management District (SMAQMD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that addresses emergency episodes.

DATES: This rule is effective on November 6, 2000 without further notice, unless EPA receives adverse comments by October 5, 2000. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Sacramento Metropolitan Air Quality Management District, 777 12th Street, 3rd Floor, Sacramento, California 95814–1908

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1189.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule Title	Adopted	Submitted
Sacramento	701	Emergency Episode Plan	05/27/99	03/28/00

On May 19, 2000, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

There are previous versions of and SMAQMD Rule 701 in the SIP. We approved a version of SMAQMD Rule 701 on December 5, 1984. The SMAQMD adopted revisions to the SIP-approved version on May 27, 1999, and CARB submitted it to us on March 28, 2000.

C. What is the Purpose of the Submitted Rule Revision?

SMAQMD Rule 701 is revised to lower the level of PM–10 at which various episode stages are declared to ensure that the most severe actions allowed under the rule are taken before PM–10 reaches a level of significant harm.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Rule 701 describes procedures that must be followed during elevated air pollution episodes. Such rules must comply with 40 CFR part 51, subpart H.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and 40 CFR part 51. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by October 5, 2000, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 6, 2000. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. This rule was developed as part of the local agency's program to control these pollutants. Table 2 lists some of the national milestones leading to the submittal of this rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, 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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must 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 and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 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 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 rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 28, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(277)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(277) * * *

(i) * * *

(B) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 701, adopted on May 27, 1999.

* * * * *

[FR Doc. 00–22651 Filed 9–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MD–103–3055a; FRL–6862–4]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Maryland; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving Maryland's 111(d)/129 plan (the "plan") for the control of air pollutant emissions from hospital/medical/infectious waste incinerators (HMIWIs). The plan was developed and submitted to EPA by the Maryland Department of the Environment, Air and Radiation Management Administration (MARMA), on April 14, 2000. EPA is publishing this approval action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments.

DATES: This final rule is effective October 20, 2000 unless by October 5, 2000 adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Denis M. Lohman, Acting Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and the Maryland Air and Radiation Management Administration, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION: This document is divided into sections I through V and answers the questions posed below.

I. General Provisions

Q. What is EPA approving?

A. EPA is approving the Maryland 111(d)/129 plan (the "plan") for the control of air pollutant emissions from hospital/medical/infectious waste incinerators (HMIWIs). The plan was developed and submitted to EPA by the Maryland Department of the Environment, Air and Radiation Management Administration (MARMA), on April 14, 2000. EPA is publishing this approval action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments.

Q. What is a State/local 111(d)/129 plan?

A. Section 111(d) of the Clean Air Act (CAA) requires that "designated" pollutants, controlled under standards of performance for new stationary sources by section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an emission guidelines (EG) document. Section 129 of the CAA specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as maximum achievable control technology (MACT). Section 129 requires EPA to promulgate a MACT-based EG document, and then requires states to develop 111(d)/129 plans that implement and enforce the EG requirements. The HMIWI EG at 40 CFR part 60, subpart Ce, establish the MACT requirements under the authority of both sections 111(d) and 129 of the CAA. These requirements must be incorporated into a State/local 111(d)/129 plan that is "at least as protective" as the EG, and is Federally enforceable upon approval by EPA.

The procedures for adoption and submittal of State 111(d)/129 plans are codified in 40 CFR part 60, subpart B. Additional information on the submittal of State plans is provided in the EPA document, "Hospital/Medical/Infectious Waste Incinerator Emission Guidelines: Summary of the Requirements for section 111(d)/129 State Plans, EPA–456/R–97–007, November 1997."

Q. What pollutant(s) will this action control?

A. The September 15, 1997 promulgated EG, subpart Ce, are applicable to all existing HMIWIs (*i.e.*, the designated facilities) that emit organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter. This action establishes emission limitations for each of these pollutants, including an opacity limitation.

Q. What are the expected environmental and public health benefits from controlling HMIWI emissions?

A. HMIWI emissions can have adverse effects on both public health and the environment. Dioxin, lead, and mercury can bioaccumulate in the environment. Exposure to dioxins/furans has been linked to reproductive and developmental effects, changes in hormone levels, and chloracne. Respiratory and other effects are associated with exposure to particulate matter, sulfur dioxide, cadmium, hydrogen chloride, and mercury. Health effects associated with exposure to cadmium, and lead include probable carcinogenic effects. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms crops and forests, and damages buildings. Implementation of the emissions control measures required under the Maryland plan will help mitigate most of the noted adverse environmental and public health impacts associated with the operation of HMIWI units.

II. Federal Requirements the Maryland HMIWI 111(d)/129 Plan Must Meet for Approval

Q. What general requirements must the MARMA meet to receive approval of its 111(d)/129 plan?

A. The plan must meet the requirements of both 40 CFR part 60, subparts B, and Ce. Subpart B specifies detailed procedures for the adoption and submittal of State plans for designated pollutants and facilities. The EG, subpart Ce, and the related new source performance standard (NSPS), subpart Ec, contain the requirements for the control of designated pollutants, as listed above, in accordance with sections 111(d) and 129 of the CAA. In general, the applicable provisions of subpart Ec relate to compliance and performance testing, monitoring, reporting, and recordkeeping. More specifically, the Maryland plan must meet the requirements of (1) 40 CFR part 60, subpart Ce, sections 60.30e through 60.39c, and the related subpart Ec provisions; and (2) 40 CFR part 60, subpart B, sections 60.23 through 26.

Q. What does the Maryland D plan contain?

A. Consistent with the requirements of subparts B, Ce and Ec, the Maryland plan contains the following elements:

1. A demonstration of Maryland's legal authority to implement the plan;
2. Identification of the Maryland enforceable mechanism, Code of Maryland (COMAR) 26.11.08 Control of Incinerators, as amended.
3. Source and emission inventories, as required;
4. Emission limitation requirements that are no less stringent than those in subpart Ce;
5. A source compliance schedule, including increments of progress, as required;
6. Source testing, monitoring, recordkeeping, and reporting requirements;
7. HMIWI operator training and qualification requirements;
8. Requirements for development of a Waste Management Plan;
9. Records of the public hearing on the Maryland plan;
10. Provision for MARMA submittal to EPA of annual reports on progress in plan enforcement; and
11. A Title V permit application due date.

On October 22, 1999, the Secretary of the Department of the Environment proposed in the *Maryland Register* to amend COMAR 26.11.08 Control of Incinerators, at .01, .02, .04, .05, and .09 and to add .08–1, specifically relating to HMIWIs. These regulatory amendments were adopted on March 7, 2000, and became effective on April 17, 2000.

Q. Does the Maryland 111(d)/129 plan meet all EPA requirements for approval?

A. Yes. The MARMA has submitted a plan that conforms to all EPA subparts B and Ce requirements. Each of the above listed plan elements is approvable. Details regarding the approvability of the plan elements are included in the technical support document (TSD) associated with this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Requirements Affected HMIWI Owners/Operators Must Meet

Q. How do I determine if my HMIWI is a designated facility subject to the MD 111(d)/129 plan?

A. If construction commenced on your HMIWI on or before June 20, 1996, it is subject to the plan. The plan contains no lower applicability threshold based on incinerator capacity. However, there are designated facility exemptions, as referenced in COMAR 26.11.08.02H. Those exemptions include incinerators that burn only pathological, low level radioactive, and/or chemotherapeutic waste; co-fired combustors; incinerators permitted under section 3005 of the Solid Waste Disposal Act; municipal waste combustors (MWC) subject to a Clean Air Act combustor rule; pyrolysis units; and cement kilns.

Q. As an affected HMIWI owner/operator, what general requirements must I meet under the approved EPA 111(d)/129 plan?

A. In general, the COMAR for HMIWI establish the following requirements:

- Emission limitations for particulate matter (PM), opacity, carbon monoxide (CO), dioxins/furans (CDD/CDF), hydrogen chloride (HCl), sulfur dioxide (SO_2), nitrogen oxides (NO_x), lead(Pb), cadmium (Cd), and mercury (Hg)
- Compliance and performance testing
- Inspection of small rural HMIWI units
- Operating parameter monitoring
- Operator training and qualification
- Development of a waste management plan
- Recordkeeping and reporting
- Title V permit

A full and comprehensive statement of the above requirements is incorporated in COMAR 26.11.08.08–1, and in related COMAR for incinerators.

Q. What emissions limits must I meet, and in what time frame?

A. You must install an emissions controls system capable of meeting the maximum available control technology (MACT) emission limitations for the pollutants identified above. The pollutant emission limitations are stipulated in COMAR 26.11.08.08–1A and .08–1B.

The 111(d)/129 plan requires you to achieve compliance with all COMAR requirements for HMIWI on or before March 15, 2001. However, you may petition the MARMA for an extension of the compliance date. The petition request must be submitted on or before September 15, 2000, and must include the following:

(a) Documentation of the analyses undertaken to support the need for an extension, including an explanation of why March 15, 2001 is not sufficient time to comply;

(b) A demonstration of the feasibility to transport the waste offsite to a commercial medical waste treatment and disposal facility on either a temporary or permanent basis; and

(c) A compliance plan and schedule that includes specific increments of progress dates, as required under COMAR 26.11.08.08–1C(1)(b), and a final compliance date that is no later than March 15, 2002.

Under COMAR 26.11.08.08–1.C(1)(b), proposed compliance date extensions beyond March 15, 2001 must be submitted to both MARMA and EPA for approval. EPA will consider approving a proposal for a compliance date extension if the proposed compliance plan and schedule is (1) expeditious, (2) approved by MARMA, and (3) consistent with the provisions of 40 CFR 60.24(f), and 60.28, subpart B, relating to EPA requirements for the adoption and submittal of state 111(d)/129 plans.

Q. Are there any operational requirements for my HMIWI and emissions control system?

A. Yes, there are operational requirements. In summary, the operational requirements relate to: (1) The HMIWI and air pollution control devices (APCD) operating within certain established parameter limits, determined during the initial performance test; (2) the use of a trained and qualified HMIWI operator; and (3) the completion of an annual update of operation and maintenance information, and its review by your HMIWI operators.

Failure to operate the HMIWI and/or air pollution control device (APCD) within certain established operating parameter limits constitutes an emissions violation for the controlled air pollutant. However, as a HMIWI owner/operator, you are provided an opportunity to establish revised operating limits, and demonstrate that

your facility is meeting the required emission limitation, providing a repeat performance test is conducted in a timely manner, as specified in the regulation.

Under the Maryland 111(d)/129 plan, effective April 17, 2000, a fully trained and qualified operator is required on site whenever your HMIWI unit is in operation. In order to be classified as a qualified operator, you must complete an appropriate HMIWI operator training course that meets the criteria referenced in COMAR 26.11.08.09B and C. In addition, effective March 1, 2001, you must maintain documentation of training (operator training manual) on site. The COMAR at 26.11.08.09C(5) requires that the cited documentation be updated annually at the time of the required annual review course, and meet the requirements of 40 CFR 60.53c(h) that define the scope of the required documentation.

The COMAR incorporates by reference (IBR) all applicable operational requirements of the EG and the related NSPS.

Q. What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?

A. Testing, monitoring, recordkeeping, and reporting requirements are summarized below:

You are required to conduct an initial source (stack) test to determine compliance with the emission limitations for PM, opacity, CO, CDD/CDF, HCl, Pb, Cd, and Hg. The initial source test must be completed no later than 180 days after your final compliance date. Consistent with the EG, no initial compliance test is required for the oxides of sulfur and nitrogen. Nevertheless, both the MARMA and the EPA have discretionary authorities under existing state and federal regulations to require, if deemed necessary, source tests for these pollutants. After the initial source test, compliance testing is then required annually (no more than 12 months following the previous test) to determine compliance with the emission limitations for PM, CO, and HCl.

As noted above, operating parameter limits are monitored and established during the initial performance test. Monitored HMIWI operating parameters include, for example, charge rate, secondary chamber and bypass stack temperatures. APCD operating parameters include, for example, CDD/CDF and Hg sorbent (*e.g.*, carbon) flow rate, HCl sorbent (*e.g.*, lime) flow rate, PM control device inlet temperature, pressure drop across the control system, and liquid flow rate, including pH.

Recordkeeping and reporting are required to document the results of the initial and annual performance tests, continuous monitoring of site-specific operating parameters, compliance with the operator training and qualification requirements, and development of a waste management plan (WMP). Records must be maintained for at least five years.

The COMAR also IBR all the applicable testing, monitoring, recordkeeping, and reporting requirements of the EG and the related NSPS.

Q. What must be included in my Waste Management Plan (WMP), and when must it be completed?

A. In summary, your WMP must identify both the feasibility of, and the approach for, separating certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from the incinerated waste. Also, in developing your WMP, you must consider the American Hospital Association publication entitled "An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities." This publication (AHA Catalog No. 057007) is available for purchase from the American Hospital Association (AHA) Service, Inc., Post Office Box 92683, Chicago, Illinois 60675–2683. For more details regarding these requirements see 40 CFR part 60, subpart Ec, section 60.55c.

Submittal of the WMP to the MARMA is required no later than 60 days following the initial performance tests required under COMAR 26.11.08.08–1A(4) and B(5).

Q. Is there a requirement for obtaining a Title V permit?

A. Yes, if your HMIWI is an affected facility, you must have submitted a complete Title V application to the MARMA no later than July 15, 2000.

IV. Final EPA Action

The Maryland 111(d)/129 plan for controlling HMIWI emissions is approvable. Based upon the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving Maryland's 111(d)/129 plan for the control of HMIWI emissions from designated facilities. As provided by 40 CFR 60.28(c), any revisions to the Maryland plan or associated regulations will not be considered part of the applicable plan until submitted by the MARMA in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective October 20, 2000 without further notice unless the Agency receives relevant adverse comments by October 5, 2000. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 20, 2000 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard. and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Maryland 111(d)/129 plan for HMIWI may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 21, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR Part 62, Subpart V, is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—[Amended]

2. A new center heading and §§ 62.5160, 62.5161, and 62.5162 is added to Subpart V to read as follows:

Emissions From Existing Hospital/ Medical/Infectious Waste Incinerators (HMIWIs)—Section 111(d)/129 Plan

§ 62.5160 Identification of plan.

Section 111(d)/129 plan for HMIWIs and the associated Code of Maryland (COMAR) 26.11.08 regulations, as submitted on April 14, 2000.

§ 62.5161 Identification of sources.

The plan applies to all existing HMIWIs located in Maryland for which construction was commenced on or before June 20, 1996.

§ 62.5162 Effective date.

The effective date of the plan is October 20, 2000.

[FR Doc. 00–22516 Filed 9–1–00; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2543

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCY: Corporation for National and Community Service.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the Corporation's codification of Office of Management and Budget (OMB) Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." OMB issued a final revision to Circular A–110 on September 30, 1999, as required by Public Law 105–277. It was published in the **Federal Register** on October 8, 1999. This interim final rule provides uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit organizations.

DATES: This interim final rule is effective October 5, 2000. Comments must be received on or before November 6, 2000.

ADDRESSES: Comments on the interim final rule should be addressed to: Bruce Cline, Director of Grants Management, Corporation for National Service, 1201 New York Avenue NW, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Bruce Cline, (202) 606–5000, ext. 440. T.D.D. (202) 565–2799. We will make this document available in an alternative format upon request.

SUPPLEMENTARY INFORMATION:

Background

Congress included a provision in OMB's appropriation for fiscal year 1999, contained in Public Law 105–277, directing OMB to amend Section .36 of Circular A–110 "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." The provision also provides for a reasonable fee to cover the costs incurred in responding to a request. Circular A–110 applies to grants and cooperative agreements to institutions of higher education, hospitals, and non-profit organizations.

OMB finalized the revision on September 30, 1999 (64 FR 54926, October 8, 1999). This interim rule amends the Corporation's codification of Circular A–110 to reflect OMB's action.

Consistent with Circular A–110, this rule applies to awards made by the Corporation to institutions of higher education, hospitals, and other non-profit organizations. It also applies to such entities if they are recipients are subawards from States, and local and Indian Tribal governments administering programs under awards from the Corporation. This rule does not apply to commercial organizations.

Regulatory Matters

Executive Order 12866

Awards made by the Corporation support national service programs and do not generally involve the production of the type of research data described in the revised Circular A–110. We have determined that this interim final rule is not a "significant" rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

We have determined and hereby certify that this interim final rule will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the regulatory flexibility analyses that are required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Small Business Regulatory Enforcement Fairness Act of 1996

We have determined that this interim final 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. Thus, it 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.

Other Impact Analyses

This interim final rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*).

Because this interim final rule does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector, it is not necessary for the Corporation to prepare the analytic statements required under Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538.

This interim final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 8 of Executive Order 13132 (August 4, 1999), we have determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Based on the opportunities to comment afforded to the public on OMB-proposed revisions to Circular A–110, we have determined that soliciting additional comment prior to our adopting the revisions is unnecessary and contrary to the public interest. Therefore, pursuant to 5 U.S.C. 553(b)(B), we adopt the revisions through the issuance of this interim final rule.

List of Subjects in 45 CFR Part 2543

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs—health, Grant programs—social, Grants administration, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Corporation for National and Community Service amends 45 CFR part 2543 as follows:

PART 2543—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 2543 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Section 2543.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 2543.36 Intangible property.

* * * * *

(c) 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)(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, the Federal awarding agency 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 the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency 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.

(3) The requirements set forth in paragraph (d)(1) of this section do not apply to commercial organizations.

* * * * *

Dated: August 24, 2000.

Wendy Zenker,

Chief Operating Officer.

[FR Doc. 00–22546 Filed 9–1–00; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 11, 21, 25, 73, 74, 76, and 100

[CS Docket No. 98–132; FCC 99–12]

1998 Biennial Review—Multichannel Video and Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Interim rule and final rule.

SUMMARY: In this document we revise and streamline the public file and notice requirements set forth in the Commission's cable television rules. The rules reduce the regulatory burden faced by cable operators with regard to public file requirements by: reorganizing the public file requirements; providing cable operators with an alternative to maintaining a paper public file; eliminating outdated public file requirements; and, expanding the definition of small cable systems for purposes of the public inspection rules. Further, in this document we are adopting as an interim rule the section of the Commission's rules which expands the definition of small cable systems for purposes of public inspection to include a limited exemption for cable operators with 1000 or more subscribers, but fewer than 5000 subscribers.

DATES: Effective October 5, 2000, except for §§ 76.1622, 76.1626, 76.1713, and 76.1800 which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. Written comments by the public on the new or modified information collection requirements should be submitted on or before November 6, 2000.

Comments on the interim rule, § 76.1700(a), are due September 26, 2000. Reply comments are due October 6, 2000.

ADDRESSES: Comments on the interim rule should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Room TW–A325, Washington, D.C. 20554. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (January 2, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>". A sample form and directions will be sent in reply.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Fleming, Cable Services Bureau, (202) 418–1026 or via Internet at cfleming@fcc.gov. For additional information concerning the information collection requirements contained herein, contact Judy Boley at 202–418–0214, or via the Internet at jboley @ fcc.gov.

SUPPLEMENTARY INFORMATION

1. The *Report and Order*, CS Docket No. 98–132; FCC 99–12, released March 26, 1999, addresses the issues raised in the *Notice of Proposed Rulemaking* in CS Docket No. 98–132, 13 FCC Rcd 15219 (1998) *("NPRM")*,[1] regarding the Commission's 1998 biennial regulatory review of its regulations conducted pursuant to Section 11 of the Telecommunications Act of 1996. In the *NPRM*, the Commission sought comments and proposals on how to streamline and reorganize part 76 public file and notice requirements. The Cable Telecommunications Association ("CATA") filed a suggested *Notice of Proposed Rulemaking ("CATA Notice")* in which it makes particular recommendations regarding changes to the public file requirements. The Commission placed the *CATA Notice* in the record of this proceeding in order to solicit comment on CATA's specific recommendations.

2. Discussion. The *Report and Order* implements rule changes designed to reorganize, consolidate, and modify the public file and notice requirements set forth in part 76. Specifically, the *Report and Order* reorganizes public file requirements into three new subparts, subparts T, U, and V. Subpart T contains notice requirements, subpart U contains recordkeeping requirements, and subpart V contains reporting and filing requirements. In some cases, existing notice requirements, such as the notice requirements for cable inside wiring, need to remain in their current sections. The subparts T, U, and V reference cable operator notice, filing, and recordkeeping requirements even if the actual rule is contained elsewhere. Where certain rules require notice to be provided at different at different times, e.g., annually, at the time of installation, and at any time upon request, the new rules make reference to the notice requirement in subsections of subpart T in which the notice requirement applies. In addition, the new subparts cross-reference additional, non-part 76 notice requirements such as the semi-annual copyright filing requirements contained in 17 U.S.C. 111(D)(1) and the cable subscriber privacy notice requirements found in 47 U.S.C. 551(a)(1).

3. The *Report and Order* also provides cable operators with an alternative to maintaining a paper public file. Many cable operators have their own World Wide Web home pages on the Internet and providing electronic access to public file information increases the number of locations from which this

[1] The *NPRM* was not published in the **Federal Register**.

information may be obtained by providing access from homes, schools, and libraries. The *Report and Order* requires cable operators to provide a computer terminal for public use and to make paper copies available upon request.

4. The *Report and Order* eliminates certain outdated public file requirements. For instance, § 76.900 which contained rate regulation freeze requirements which expired on May 15, 1994. The Commission determined that that rule and similar rules no longer have any operational consequence. Section 76.58, which required cable operators to provide certain notifications to local broadcast stations by May 3, 1993 and June 2, 1993, has been modified to require cable operators to provide local broadcast station notifications within 60 days after a new cable system is activated.

5. The *Report and Order* expands the definition of small cable systems for purposes of the public inspection file. An exemption from the recordkeeping requirements has been created for cable systems serving 1000 or more subscribers but fewer than 5000 subscribers. Those systems are permitted to respond to specific and individual requests for public file information instead of maintaining a general paper file containing all information required by part 76.

Paperwork Reduction Act

This *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose new or modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirements contained in this *Report and Order*, as required by the 1995 Act. Public comments are due 60 days after date of publication in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–XXXX (new collection).

Title: Part 76 Multichannel Video and Cable Television Service Public File and Notice Rules.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 10,800.

Estimated Time Per Response: 30 minutes to 3 hours.

Frequency of Response: Subscriber privacy notice requirement: as needed, and Copyright Act statement of accounting filing requirement: semi-annually.

Total Burden to Respondents: 43,200 hours.

Total Cost to Respondents: $43,200.

Needs and Uses: Section 631 of the Communications Act as amended, 47 U.S.C. 551, provides that at the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of (a) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information; (b) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made; (c) the period during which such information will be maintained by the cable operator; (d) the times and place at which the subscriber may have access to such information in accordance with Section 631(d), the limitations provided by Section 631 with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under Sections 631(f) and (h) to enforce such limitations. This notice requirement appears in the Communications Act but not in the Commission's cable television rules. The *Report and Order* amends the Commission's cable television rules so that the notice requirement is now referenced in notes at the end of various new rule sections.

In addition, the Copyright Act, 17 U.S.C. 111(d)(1), requires that cable operators file, on a semi-annual basis, a statement of account with the Licensing Division of the Copyright Office, Library of Congress. The *Report and Order* amends the Commission's cable television rules do that this filing is now referenced in a note at the end of new § 76.1800.

Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the Notice of Proposed Rule Making *("NPRM")* in this proceeding. The Commission sought written public comment on the possible impact of the proposed policies and rules on small entities in the *NPRM* including comments on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") in this *Report and Order* conforms to the RFA.

7. Need for Action and Objectives of the Rules. Section 11 of the 1996 Telecommunications Act requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest. Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an excellent opportunity for a thorough examination of all of the Commission's regulations.

8. Summary of Significant Issues Raised by the Public Comment in Response to the IRFA. No comments were filed specifically in response to the IRFA.

9. Description and Estimate of the Number of Small entities to Which the Rules Will Apply. The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules here adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the "Small Business Act." Under the Small Business Act, a small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration. The rules we adopt in this *Report and Order* will affect cable systems, multipoint multichannel distribution systems, direct broadcast satellites, home satellite dish manufacturers, open video systems, satellite master antenna television, local multipoint distribution systems, program producers and distributors, and television stations. Below we set forth the general SBA and Commission cable

small size standards, and then address each service individually to provide a more precise estimate of small entities. We also describe program producers and distributors.

10. SBA Definitions for Cable and Other Pay Television Services: The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system 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 data from 1992, there were approximately 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue.

11. Additional Cable System Definitions: In addition, the Commission has developed, with SBA's approval, our 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 no more than 400,000 subscribers nationwide. Based on recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. 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 1439 small entity cable system operators that may be affected by the decisions and rules we are adopting. We conclude that only a small percentage of these entities currently provide qualifying "telecommunications services" as required by the Communications Act and, therefore, estimate that the number of such entities are significantly fewer than noted.

12. 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." The Commission has determined that there are 61,700,000 cable 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 the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. 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.

13. Multipoint Multichannel Distribution Systems ("MMDS"): The Commission refined its definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MMDS auctions has been approved by the SBA.

14. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We conclude that, for purposes of this FRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

15. Direct Broadcast Satellite ("DBS"): Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. In the *NPRM* we concluded that no DBS operator qualifies as a small entity. Since the publication of the *NPRM*, more information has become available. In light of the 1997 gross revenue figures for the various DBS operators, we restate our conclusion that no DBS operator qualifies as a small entity.

16. Home Satellite Dish ("HSD"): The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 500 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 350 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing.

17. According to the most recently available information, there are approximately 20 to 25 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,184,470 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator ("MSO").

18. Satellite Master Antenna Television ("SMATVs"): Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.162 million residential subscribers as of June 30, 1997. The ten largest SMATV operators together pass 848,450 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we conclude that a substantial number of SMATV operators qualify as small entities.

19. Local Multipoint Distribution System ("LMDS"): Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may

be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA approved definition for cable and other pay services that qualify as a small business is defined in paragraphs 5–6, *supra*. A small radiotelephone entity is one with 1500 employees or fewer. However, for the purposes of this *Report and Order*, we include only an estimate of LMDS video service providers.

20. An auction for licenses to operate LMDS systems was recently completed by the Commission. The vast majority of the LMDS license auction winners were small businesses under the SBA's definition of cable and pay television (SIC 4841). The Commission adopted a small business definition for entities bidding for LMDS licenses as an entity that, together with affiliates and controlling principles, has average gross revenues not exceeding $40 million for each of the three preceding years. We have not yet received approval by the SBA for this definition.

21. There is only one company, CellularVision, that is currently providing LMDS video services. In the *IRFA*, we assumed that CellularVision was a small business under both the SBA definition and our auction rules. No commenters addressed the tentative conclusions we reached in the *NPRM*. Accordingly, we affirm our tentative conclusion that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

22. Open Video System ("OVS"): As of the date of this *Report and Order*, the Commission has certified 23 OVS operators. To the best of our knowledge, there are 2 certified operators that are currently providing OVS service. Little financial information is available for entities authorized to provide OVS that are not operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenue, we conclude that at least some of the OVS operators qualify as small entities.

23. Program Producers and Distributors: The Commission has not developed a definition of small entities applicable to producers or distributors of television programs. Therefore, we will utilize the SBA classifications of Motion Picture and Videotape Production (SIC 7812), Motion Picture and Videotape Distribution (SIC 7822), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the television programming industry is an entity with $21.5 million or less in annual receipts for SIC 7812 and 7822, and $5 million or less in annual receipts for SIC 7922. The 1992 Bureau of the Census data indicate the following: (1) There were 7265 U.S. firms classified as Motion Picture and Video Production (SIC 7812), and that 6987 of these firms had $16,999 million or less in annual receipts and 7002 of these firms had $24,999 million or less in annual receipts; (2) there were 1139 U.S. firms classified as Motion Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had $16,999 million or less in annual receipts and 1013 of these firms had $24,999 million or less in annual receipts; and (3) there were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than $5 million in annual receipts.

24. Each of these SIC categories is very broad and includes firms that may be engaged in various industries including television. Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, we conclude that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the rules adopted in this *Report and Order*.

25. Television Stations: The rules will apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998. In addition, as of October 31, 1997, there were 1,880 LPTV stations that may also be affected by our rules. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.

26. Thus, the rules will affect many of the approximately 1,579 television stations; approximately 1,200 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

27. In addition to owners of operating television stations, any entity who seeks or desires to obtain a television broadcast license may be affected by the rules contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown.

28. Description of Reporting, Recordkeeping and Other Compliance Requirements. This analysis examines the costs and administrative burdens associated with our rules and requirements. This *Report and Order* eliminates certain recordkeeping requirements and provides cable operators with the alternative option to provide public file information over the Internet. Thus, the Commission has reduced administrative burdens of the public file requirements.

29. Steps Taken To Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered. We believe that our rules, to reorganize, modify, and eliminate certain public file and notice requirements, make the amended part 76 public file rules easier to locate. Several rules have been modified for less burdensome compliance with the public file requirements. In addition, we have provided cable operators with the option of eliminating its paper file and providing public file information over the Internet.

30. It is ordered that, pursuant to authority found in Sections 4(i) through (j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) through (j), the Commission's rules are hereby amended as set forth in the rule changes.

31. It is further ordered that the rules as amended shall become effective October 5, 2000, except §§ 76.1622, 76.1626, 76.1713, and 76.1800, which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a

document in the Federal Register announcing the effective date for those sections.

32. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 11

Emergency alert system.

47 CFR Part 21

Domestic public fixed radio services.

47 CFR Part 25

Satellite communications.

47 CFR Part 73

Radio broadcast services.

47 CFR Part 74

Experimental radio, auxiliary, special broadcast and other program distributional services.

47 CFR Part 76

Multichannel video and cable television service.

47 CFR Part 100

Direct broadcast satellite service.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Group.

Rule Changes

Parts 1, 11, 21, 25, 73, 74, 76, and 100 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(j), 155, 225, and 303(r).

§ 1.1106 [Amended]

2. Section 1.1106, paragraph (h), is amended by removing "76.12" and adding in its place "§ 76.1801".

PART 11—EMERGENCY ALERT SYSTEM (EAS)

3. The authority citation for Part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(j) and (o), 303(r), 544(g), and 606.

§ 11.35 [Amended]

4. Section 11.35, paragraph (a), is amended by removing "§ 76.305" and adding in its place "§§ 76.1700, 76.1708, and 76.1711".

§ 11.54 [Amended]

5. Section 11.54, paragraph (b)(14), is amended by removing "§ 76.305" and adding in its place "§§ 76.1700, 76.1708, and 76.1711".

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

6. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 1, 2 , 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

§ 21.920 [Amended]

7. Section 21.920 is amended by removing "part 76, subpart E" each place it appears and adding in its place "part 76, subparts E and U".

PART 25—SATELLITE COMMUNICATIONS

8. The authority citation for Part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

§ 25.601 [Amended]

9. Section 25.601 is amended by removing "part 76, subpart E" each time it appears and adding in its place "part 76, subparts E and U".

PART 73—RADIO BROADCAST SERVICES

10. The authority citation for Part 73 continues to read as follows:

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

§ 73.3526 [Amended]

11. Section 73.3526 is amended in paragraph (e)(15) by removing "§ 76.64" and adding in its place "§§ 76.64 and 76.1608".

§ 73.3527 [Amended]

12. Section 73.3527 is amended in paragraph (e)(12) by removing "§ 76.56" and adding in its place "§§ 76.56, 76.1614, 76.1620, and 76.1709".

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

13. The authority for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

§ 74.996 [Amended]

14. Section 74.996 is amended by removing each time it appears "part 76, subpart E" and adding in its place "part 76, subparts E and U".

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

15. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

16. Section 76.3 is revised to read as follows:

§ 76.3 Other pertinent rules.

Other pertinent provisions of the Commission's rules and regulations relating to Multichannel Video and the Cable Television Service are included in the following parts of this chapter:

Part 1—Practice and Procedure.
Part 11—Emergency Alert System (EAS).
Part 21—Domestic Public Radio Services (Other Than Maritime Mobile).
Part 63—Extension of Lines and Discontinuance of Service by Carriers.
Part 64—Miscellaneous Rules Relating to Common Carriers.
Part 78—Cable Television Relay Service.
Part 79—Closed Captioning of Video Programming.
Part 91—Industrial Radio Services.

§ 76.5 [Amended]

17. Section 76.5 is amended in paragraph (pp)(2) by removing "§ 76.302" and adding in its place "§ 76.1708."

§ 76.12 [Removed]

18. Section 76.12 is removed.

§ 76.14 [Removed]

19. Section 76.14 is removed.

§ 76.17 [Removed]

20. Section 76.17 is removed.

§ 76.56 [Amended]

21. Section 76.56 is amended by removing paragraphs (d)(3) and (e), by redesignating paragraph (f) as paragraph (e), and by adding notes 1, 2, and 3 to read as follows:

§ 76.56 Signal carriage obligations.

* * * * *

Note 1 to § 76.56: Section 76.1620 provides notification requirements for a cable operator who authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections.

Note 2 to § 76.56: Section 76.1614 provides response requirements for a cable operator who receives a written request to identify its must-carry signals.

Note 3 to § 76.56: Section 76.1709 provides recordkeeping requirements with regard to a cable operator's list of must-carry signals.

§ 76.58 [Removed]

22. Section 76.58 is removed.

§ 76.64 [Amended]

23. Section 76.64 is amended in paragraph (i) by removing "76.56(f)" and adding in its place "§ 76.56(e)," by removing paragraph (j), by redesignating paragraphs (k), (l), (m), and (n) as paragraphs (j), (k), (l), and (m), and by adding a Note to read as follows:

§ 76.64 Retransmission consent.

* * * * *

Note 1 to § 76.64: Section 76.1608 provides notification requirements for a cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems.

24. Section 76.95 is amended by revising paragraph (a) and by adding a Note to read as follows:

§ 76.95 Exceptions.

(a) The provisions of §§ 76.92–76.94 shall not apply to a cable system serving fewer than 1,000 subscribers.

Note to § 76.95 (a): Section 76.1609 contains notification requirements for a cable system that meets the 1,000 subscriber threshold of this section.

25. Section 76.156 is amended by revising paragraph (b) and by adding a note to read as follows:

§ 76.156 Exceptions.

* * * * *

(b) The provisions of §§ 76.151–76.155 shall not apply to a cable system serving fewer than 1,000 subscribers.

Note 1 to § 76.156: Section 76.1609 contains notification requirements for a cable system that meets the 1,000 subscriber threshold of this section.

26. Section 76.206 is amended by revising paragraph (b) introductory text to read as follows:

§ 76.206 Candidate rates.

* * * * *

(b) If a system permits a candidate to use its cablecast facilities, the system shall make all discount privileges offered to commercial advertisers, including the lowest unit charges for each class and length of time in the same time period and all corresponding discount privileges, available on equal terms to all candidates. This duty includes an affirmative duty to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers, as provided in § 76.1611. Systems may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

* * * * *

§ 76.207 [Removed]

27. Section 76.207 is removed.

28. Section 76.209 is revised to read as follows:

§ 76.209 Fairness doctrine; personal attacks; political editorials.

A cable television system operator engaging in origination cablecasting shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

Note 1 to § 76.209: See public notice, "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance," 29 FR 10415.

Note 2 to § 76.209: Section 76.1612 contains notice and other requirements for a cable television system operator when, during origination cablecasting of issues of public importance, an attack is made upon the honesty, character, integrity, or like personal qualities of an identified person or group.

Note 3 to § 76.209: Section 76.1613 contains notice and other requirements for a cable system operator where the system operator, in an editorial, endorses or opposes a legally qualified candidate or candidates.

§ 76.221 [Removed]

29. Section 76.221 is removed.

30. Section 76.225 is amended by removing paragraph (c) and adding a new note 3 to read as follows:

§ 76.225 Commercial limits in children's programs.

* * * * *

Note 3 to § 76.225: Section 76.1703 contains recordkeeping requirements for cable operators with regard to children's programming.

§§ 76.300 through 76.302 [Removed]

31. Sections 76.300 through 76.302 are removed.

§ 76.307 [Removed]

32. Section 76.307 is removed.

§ 76.309 [Amended]

33. Section 76.309 is amended by removing paragraphs (c)(3)(i) and (c)(3)(ii) and by redesignating paragraphs (c)(3)(iii) and (iv) as paragraphs (c)(3)(i) and (c)(3)(ii).

§ 76.400 [Removed]

34. Section 76.400 is removed.

§ 76.504 [Amended]

35. Section 76.504 is amended by removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f), and by adding a note 2 to § 76.504 to read as follows:

§ 76.504 Limits on carriage of vertically integrated programming.

* * * * *

Note 2 to § 76.504: Section 76.1710 contains recordkeeping requirements for cable operators with regard to attributable interests.

36. Section 76.601 is revised to read as follows:

§ 76.601 Performance tests.

(a) The operator of each cable television system shall be responsible for insuring that each such system is designed, installed, and operated in a manner that fully complies with the provisions of this subpart.

(b) The operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605(a) and shall be as follows:

(1) For cable television systems with 1000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (*e.g.*, 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, *etc.*). In addition, for technically integrated portions of cable systems that are not mechanically continuous (i.e., employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-

performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(a) (3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (*e.g.*, 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217–300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit to 300 to 400 MHz, etc.). The channels selected for testing must be representative of all the channels within the cable television system.

(3) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

(c) Successful completion of the performance tests required by paragraph (b) of this section does not relieve the system of the obligation to comply with all pertinent technical standards at all subscriber terminals. Additional tests, repeat tests, or tests involving specified subscriber terminals may be required by the Commission or the local franchiser to secure compliance with the technical standards.

(d) The provisions of paragraphs (b) and (c) of this section shall not apply to any cable television system having fewer than 1,000 subscribers: *Provided, however,* that any cable television system using any frequency spectrum other than that allocated to over-the-air television and FM broadcasting (as described in §§ 73.603 and 73.210 of this chapter) is required to conduct all tests, measurements and monitoring of signal leakage that are required by this subpart. A cable television system operator complying with the monitoring, logging and the leakage repair requirements of § 76.614, shall be considered to have met the requirements of this paragraph. However, the leakage log shall be retained for five years rather than the two years prescribed in § 76.1706.

Note 1 to § 76.601: Prior to requiring any additional testing pursuant to § 76.601(c), the local franchising authority shall notify the cable operator who will be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected. The Commission may request cable operators to test their systems at any time.

Note 2 to § 76.601: Section 76.1717 contains recordkeeping requirements for each system operator in order to show compliance with the technical rules of this subpart.

Note 3 to § 76.601: Section 76.1704 contains recordkeeping requirements for proof of performance tests.

§ 76.605 [Amended]

37. Section 76.605, Note 5 is amended by removing § "76.601(c)(2)" each place it appears and adding in their place "§ 76.601(b)(2)."

§ 76.607 [Removed]

38. Section 76.607 is removed.

§ 76.610 [Amended]

39. Section 76.610 is amended by removing "76.615" and adding in its place "76.1803 and 76.1804".

40. Section 76.614 is revised to read as follows:

§ 76.614 Cable television system regular monitoring.

Cable television operators transmitting carriers in the frequency bands 108–137 and 225–400 MHz shall provide for a program of regular monitoring for signal leakage by substantially covering the plant every three months. The incorporation of this monitoring program into the daily activities of existing service personnel in the discharge of their normal duties will generally cover all portions of the system and will therefore meet this requirement. Monitoring equipment and procedures utilized by a cable operator shall be adequate to detect a leakage source which produces a field strength in these bands of 20 uV/m or greater at a distance of 3 meters. During regular monitoring, any leakage source which produces a field strength of 20 uV/m or greater at a distance of 3 meters in the aeronautical radio frequency bands shall be noted and such leakage sources shall be repaired within a reasonable period of time.

Note 1 to § 76.614: Section 76.1706 contains signal leakage recordkeeping requirements applicable to cable operators.

§ 76.615 [Removed]

41. Section 76.615 is removed.

§ 76.620 [Amended]

42. Section 76.620, paragraph (a) is amended by removing § 76.615(b)(1) through (6)" and adding in its place "§§ 76.1804(a) through (f)," and by removing "§ 76.615(b)(7)" and adding in its place "§ 76.1804(g)", and in paragraph (b) by removing " § 76.615(b)(2)" and adding in its place "§ 76.1804(b)".

§ 76.630 [Amended]

43. Section 76.630 is amended by removing paragraphs (c) and (d), by revising the note and by adding notes 2 and 3 to read as follows:

§ 76.630 Compatibility with consumer electronics equipment.

* * * * *

Note 1 to § 76.630: The provisions of paragraphs (a) and (b) of this section are applicable July 31, 1994, and June 30, 1994, respectively.

Note 2 to § 76.630: § 76.1621 contains certain requirements pertaining to a cable operator's offer to supply subscribers with special equipment that will enable the simultaneous reception of multiple signals.

Note 3 to § 76.630: § 76.1622 contains certain requirements pertaining to the provision of a consumer education program on compatibility matters to subscribers.

§ 76.900 [Removed]

44. Section 76.900 is removed.

§ 76.931 [Removed]

45. Section 76.931 is removed.

§ 76.932 [Removed]

46. Section 76.932 is removed.

§ 76.934 [Amended]

47. Section 76.934 is amended by removing paragraph (g)(2), by redesignating paragraphs (g)(3), (g)(4), and (g)(5) as newly designated paragraphs (g)(2), (g)(3) and (g)(4), and by adding a note to the end of paragraph (g), to read as follows:

§ 76.934 Small systems and small cable companies.

* * * * *

Note to paragraph (g) of § 76.934: Small systems owned by small cable companies must comply with the alternative rate agreement filing requirements of § 76.1805.

* * * * *

§ 76.958 [Removed]

48. Section 76.958 is removed.

§ 76.964 [Removed]

49. Section 76.964 is removed.

§ 76.980 [Amended]

50. Section 76.980 is amended by revising paragraph (d) and by adding a note to read as follows:

§ 76.980 Charges for customer changes.

* * * * *

(d) A cable operator may establish a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, subject to approval by the franchising authority, for a subscriber changing service tiers more than two times in a twelve month period, except for such changes ordered in response to a change in price or channel line-up.

* * * * *

Note 1 to § 76.980: Cable operators must also notify subscribers of potential charges for customer service changes, as provided in § 76.1604.

§ 76.987 [Amended]

51. Section 76.987 is amended in paragraph (e) by removing "76.964" and adding in its place "§ 76.1603," and by removing paragraph (g), and by adding a note to read as follows:

§ 76.987 New product tiers.

* * * * *

Note 1 to § 76.987: Cable operators offering a NPT must comply with the notice requirement of § 76.1605.

52. Section 76.1404 is revised to read as follows:

§ 76.1404 Use of cable facilities by local exchange carriers.

(a) For purposes of § 76.505(d)(2), the Commission will determine whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the procedures in paragraph (b) of this section.

(b) Based on the record created by § 76.1617 of the rules, the Commission shall determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and duration. In making this determination, the Commission will evaluate whether the proposed joint use of cable facilities promotes competition in both services and facilities, and encourages long-term investment in telecommunications infrastructure.

53. Section 76.1503 is amended by revising paragraph (c)(2)(ii) and by adding Note 3 to paragraph (c)(2)(ii) to read as follows:

§ 76.1503 Carriage of video programming providers on open video systems.

* * * * *

(c) * * *

(2) * * *

(ii) *Subsequent changes in capacity or demand.* An open video system operator must allocate open capacity, if any, at least once every three years, beginning three years from the date of service commencement. Open capacity shall be allocated in accordance with this section. Open capacity shall include all capacity that becomes available during the course of the three-year period, as well as capacity in excess of one-third of the system's activated channel capacity on which the operator of the open video system or its affiliate selects programming.

* * * * *

Note 3 to paragraph (c)(2)(ii): An open video system operator shall be required to comply with the recordkeeping requirements of § 76.1712.

* * * * *

54. Add subpart T to part 76 to read as follows:

Subpart T—Notices

Sec.

Subpart T—Notices

§ 76.1601 Deletion or repositioning of broadcast signals.

Effective April 2, 1993, a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such notification shall also be provided to subscribers of the cable system.

Note 1 to § 76.1601: No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods—generally including February, May, July and November—commonly known as audience sweeps.

§ 76.1602 Customer service—general information.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services;

(3) Installation and service maintenance policies;

(4) Instructions on how to use the cable service;

(5) Channel positions of programming carried on the system; and

(6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

§ 76.1603 Customer service—rate and service changes.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by § 76.1602.

(c) In addition to the requirements of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (*e.g.*, inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified.

(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

(f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

Note 1 to § 76.1603: Section 624(h) of the Communications Act, 47 U.S.C. 544(h), contains additional notification requirements which a franchising authority may enforce.

Note 2 to § 76.1603: Section 624(d)(3) of the Communications Act, 47 U.S.C. 544(d)(3), contains additional notification provisions pertaining to cable operators who offer a premium channel without charge to cable subscribers who do not subscribe to such premium channel.

Note 3 to § 76.1603: Section 631 of the Communications Act, 47 U.S.C. 551, contains additional notification requirements pertaining to the protection of subscriber privacy.

§ 76.1604 Charges for customer service changes.

If a cable operator establishes a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, as provided in § 76.980(d), the cable system must notify all subscribers in writing that they may be subject to such a charge for changing service tiers more than the specified number of times in any 12 month period.

§ 76.1605 New product tier.

(a) Within 30 days of the offering of an NPT, operators shall file with the Commission a copy of the new rate card that contains the following information on their BSTs, CPSTs and NPTs:

(1) The names of the programming services contained on each tier; and

(2) The price of each tier.

(b) Operators also must file with the Commission, copies of notifications that were sent to subscribers regarding the initial offering of NPTs. After this initial filing, cable operators must file updated rate cards and copies of customer notifications with the Commission within 30 days of rate or service changes affecting the NPT.

§ 76.1606 Rate change while complaint pending.

A regulated cable operator that proposes to change any rate while a cable service tier complaint is pending before the Commission shall provide the Commission at least 30 days notice of the proposed change.

§ 76.1607 Principal headend.

A cable operator shall provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend.

§ 76.1608 System technical integration requiring uniform election of must-carry or retransmission consent status.

A cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems must give 90 days notice of its intention to do so to any television broadcast stations that have elected must-carry status with respect to one system and retransmission consent status with respect to the other. If the system and the station do not agree on a uniform election 45 days prior to integration, the cable system may require the station to make such a uniform election 30 days prior to integration.

§ 76.1609 Non-duplication and syndicated exclusivity.

Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection or syndicated exclusivity protection against it.

76.1610 Change of operational information.

Within 30 days following a change of cable television system operator, and/or change of the operator's mail address, and/or change in the operational status of a cable television system, the operator shall inform the Commission in writing of the following, as appropriate:

(a) The legal name of the operator and whether the operator is an individual, private association, partnership or corporation. *See* § 76.5(cc). If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied;

(b) The assumed name (if any) used for doing business in each community;

(c) The new mail address, including zip code, to which all communications are to be directed;

(d) The nature of the operational status change (e.g., became operational on [year] [month], exceeded 49 subscribers, exceeded 499 subscribers, operation terminated temporarily, operation terminated permanently);

(e) The names and FCC identifiers (e.g., CA 0001) of the system communities affected.

Note 1 to § 76.1610: FCC system community identifiers are routinely assigned upon registration. They have been assigned to all reported system communities based on previous Form 325 data. If a system community in operation prior to March 31, 1972, has not previously been assigned a system community identifier, the operator shall provide the following information in lieu of the identifier: Community Name, Community Type (i.e., incorporated town, unincorporated settlement, etc.), County Name, State, Operator Legal Name, Operator Assumed Name for Doing Business in the Community, Operator Mail Address, and Year and Month service was first provided by the physical system.

§ 76.1611 Political cable rates and classes of time.

If a system permits a candidate to use its cablecast facilities, the system shall disclose to all candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers. Systems may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(a) A description and definition of each class of time available to commercial advertisers sufficiently complete enough to allow candidates to identify and understand what specific attributes differentiate each class;

(b) A description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(c) A description of the system's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(d) An approximation of the likelihood of preemption for each kind of preemptible time; and

(e) An explanation of the system's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

§ 76.1612 Personal attack.

(a) When, during origination cablecasting of issues of public importance, an attack is made upon the honesty, character, integrity, or like personal qualities of an identified person or group, the cable television system operator shall, within a reasonable time and in no event later than one (1) week after the attack, transmit to the person or group attacked:

(1) Notification of the date, time, and identification of the cablecast;

(2) A script or tape (or an accurate summary if a script or tape is not available) of the attack; and

(3) An offer of a reasonable opportunity to respond over the system's facilities.

(b) The provisions of paragraph (a) of this section shall not apply to cablecast material which falls within one or more of the following categories:

(1) Personal attacks on foreign groups or foreign public figures;

(2) Personal attacks occurring during uses by legally qualified candidates;

(3) Personal attacks made during cablecasts not included in paragraph (a)(2) of this section and made by legally qualified candidates, their authorized spokespersons or those associated with them in the campaign, on other such candidates, their authorized spokespersons or persons associated with the candidates in the campaign; and

(4) Bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events (including commentary or analysis contained in the foregoing programs, but, the provisions of paragraph (a) of this section shall be applicable to editorials of the cable television system operator).

§ 76.1613 Political editorials.

Where a cable television system operator, in an editorial endorses or opposes a legally qualified candidate or candidates, the system operator shall, within 24 hours of the editorial, transmit the following to the other qualified candidate or candidates for the same office or the candidate opposed in the editorial:

(a) Notification of the date, time, and channel of the editorial;

(b) A script or tape of the editorial; and

(c) An offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the system's facilities: *Provided, however,* that where such editorials are cablecast within 72 hours prior to the day of the election, the system operator shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

§ 76.1614 Identification of must-carry signals.

A cable operator shall respond in writing within 30 days to any written request by any person for the identification of the signals carried on its system in fulfillment of the must-carry requirements of § 76.56.

§ 76.1615 Sponsorship identification.

(a) When a cable television system operator engaged in origination cablecasting presents any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such cable television system operator, the cable television system operator, at the time of the cablecast, shall announce that such matter is sponsored, paid for, or furnished, either in whole or in part, and by whom or on whose behalf such consideration was supplied: *Provided, however,* that "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a cablecast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the cablecast. For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for." In the case of any political advertisement cablecast under this paragraph that concerns candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds.

(b) Each cable television system operator engaged in origination cablecasting shall exercise reasonable diligence to obtain from employees, and from other persons with whom the system operator deals directly in connection with any matter for cablecasting, information to enable such system operator to make the announcement required by this section.

(c) In the case of any political origination cablecast matter or any origination cablecast matter involving the discussion of public controversial issues for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a cable television system operator as an inducement for cablecasting such matter, an announcement shall be made both at the beginning and conclusion of such cablecast on which such material

or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such cable television system operator in connection with the transmission of such cablecast matter: *Provided, however,* that in the case of any cablecast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the cablecast.

(d) The announcement required by this section shall, in addition to stating the fact that the origination cablecasting matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (c) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a cable television system operator on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the system operator, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent.

(e) In the case of an origination cablecast advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the cablecast.

(f) The announcement otherwise required by this section is waived with respect to the origination cablecast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise.

(g) The announcements required by this section are waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

Note to § 76.1615(g): The waiver heretofore granted by the Commission in its Report and Order, adopted November 16, 1960 (FCC 60–1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when § 73.654(e) of this chapter, the predecessor television rule, went into effect.

(h) Commission interpretations in connection with the provisions of the sponsorship identification rules for the broadcasting services are contained in the Commission's Public Notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 FCC 141), as modified by Public Notice, dated April 21, 1975 (FCC 75–418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports. The interpretations made for the broadcasting services are equally applicable to origination cablecasting.

§ 76.1616 Contracts with local exchange carriers.

Within 10 days of final execution of a contract permitting a local exchange carrier to use that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end use, the parties shall submit a copy of such contract, along with an explanation of how such contract is reasonably limited in scope and duration, to the Commission for review. The parties shall serve a copy of this submission on the local franchising authority, along with a notice of the local franchising authority's right to file comments with the Commission consistent with § 76.7.

§ 76.1617 Initial must-carry notice.

(a) Within 60 days of activation of a cable system, a cable operator must notify all qualified NCE stations of its designated principal headend by certified mail.

(b) Within 60 days of activation of a cable system, a cable operator must notify all local commercial and NCE stations that may not be entitled to carriage because they either:

(1) Fail to meet the standards for delivery of a good quality signal to the cable system's principal headend, or

(2) May cause an increased copyright liability to the cable system.

(c) Within 60 days of activation of a cable system, a cable operator must send by certified mail a copy of a list of all broadcast television stations carried by its system and their channel positions to all local commercial and noncommercial television stations, including those not designated as must-carry stations and those not carried on the system.

§ 76.1618 Basic tier availability.

A cable operator shall provide written notification to subscribers of the availability of basic tier service to new subscribers at the time of installation. This notification shall include the following information:

(a) That basic tier service is available;

(b) The cost per month for basic tier service;

(c) A list of all services included in the basic service tier.

§ 76.1619 Information on subscriber bills.

(a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(c) A cable franchise authority may enforce the customer service standards set forth in this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

§ 76.1620 Availability of signals.

If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers. Such notification must be provided by June 2, 1993, and annually thereafter and to each new subscriber upon initial installation. The notice, which may be included in routine billing statements, shall identify the signals that are unavailable without an additional connection, the manner for obtaining such additional connection and instructions for installation.

§ 76.1621 Equipment compatibility offer.

Cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in § 15.3(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple

signals. The equipment offered shall include a single terminal device with dual descramblers/decoders and/or timers and bypass switches. Other equipment, such as two independent set-top terminal devices may be offered at the same time that the single terminal device with dual tuners/descramblers is offered. For purposes of this rule, two set-top devices linked by a control system that provides functionality equivalent to that of a single device with dual descramblers is considered to be the same as a terminal device with dual descramblers/decoders.

(a) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year.

(b) Such special equipment shall, at a minimum, have the capability:

(1) To allow simultaneous reception of any two scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and

(2) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(c) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(d) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in § 76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

§ 76.1622 Consumer education program on compatibility.

Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(a) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(b) The consumer information program shall include the following information:

(1) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(2) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: view a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as "Picture-in-Picture," channel review and other functions that necessitate channel selection by the consumer device.

(3) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

55. Add subpart U to part 76 to read as follows:

Subpart U—Documents to be Maintained for Inspection

Sec.

Subpart U—Documents to be Maintained for Inspection

§ 76.1700 Records to be maintained locally by cable system operators.

(a) *Recordkeeping requirements.* The operator of every cable television system having fewer than 1,000 subscribers is exempt from the public inspection requirements contained in §§ 76.1701 (political file); 76.1715 (sponsorship identifications); 76.1702 (equal employment opportunity); 76.1703 (commercial records for children's programming); 76.1704 (proof-of-performance test data); and 76.1706 (signal leakage logs and repair records). The operator of every cable television system having 1000 or more subscribers but fewer than 5000 subscribers shall, upon request, provide the information required by §§ 76.1715 (sponsorship

identifications); 76.1702 (equal employment opportunity); 76.1703 (commercial records for children's programming); 76.1704 (proof-of-performance test data); and 76.1706 (signal leakage logs and repair records) but shall maintain for public inspection a file containing a copy of all records required to be kept by § 76.1701 (political file). The operator of every cable television system having 5000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by §§ 76.1701 (political file); 76.1715 (sponsorship identifications); 76.1702 (equal employment opportunity); 76.1703 (commercial records for children's programming); 76.1704 (proof-of-performance test data); and 76.1706 (signal leakage logs and repair records).

(1) A record shall be kept of each test and activation of the Emergency Alert System (EAS) procedures pursuant to the requirement of part 11 of this chapter and the EAS Operating Handbook. These records shall be kept for three years.

(2) [Reserved]

(b) *Location of records.* The public inspection file shall be maintained at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s) (such as a public registry for documents or an attorney's office). The public inspection file shall be available for public inspection at any time during regular business hours.

(c) All or part of the public inspection file may be maintained in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public who wish to review the file.

(d) The records specified in paragraph (a) of this section shall be retained for the period specified in §§ 76.1701, 76.1702, 76.1704(a), and 76.1706, respectively.

(e) *Reproduction of records.* Copies of any material in the public inspection file shall be available for machine reproduction upon request made in person, provided the requesting party shall pay the reasonable cost of reproduction. Requests for machine copies shall be fulfilled at a location specified by the system operator, within a reasonable period of time, which in no event shall be longer than seven days. The system operator is not required to honor requests made by mail but may do so if it chooses.

§ 76.1701 Political file.

(a) Every cable television system shall keep and permit public inspection of a complete and orderly record (political file) of all requests for cablecast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

(d) Where origination cablecasting material is a political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the matter, the system operator shall, in addition to making the announcement required by § 76.1616(a), require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the local office of the system. Such lists shall be kept and made available for a period of two years.

§ 76.1702 Equal employment opportunity.

Every employment unit shall maintain for public inspection a file containing copies of all annual employment reports filed pursuant to § 76.77. Each document shall be retained for a period of five years. The file shall be maintained at the central office and at every location with more than five full-time employees. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multiple cable operator shall be maintained at the central office of the headquarters employment unit. The cable entity shall provide reasonable accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

§ 76.1703 Commercial records on children's programs.

Cable operators airing children's programming must maintain records sufficient to verify compliance with § 76.225 and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

§ 76.1704 Proof-of-performance test data.

(a) The proof of performance tests required by § 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request.

(b) The provisions of paragraph (a) of this section shall not apply to any cable television system having fewer than 1,000 subscribers, subject to the requirements of § 76.601(d).

Note to § 76.1704: If a signal leakage log is being used to meet proof of performance test recordkeeping requirements in accordance with § 76.601, such a log must be retained for the period specified in § 76.601(d).

§ 76.1705 Performance tests (channels delivered).

The operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.

§ 76.1706 Signal leakage logs and repair records.

Cable operators shall maintain a log showing the date and location of each leakage source identified pursuant to § 76.614, the date on which the leakage was repaired, and the probable cause of the leakage. The log shall be kept on file for a period of two years and shall be made available to authorized representatives of the Commission upon request.

Note to § 76.1705: If a signal leakage log is being used to meet proof of performance test recordkeeping requirements in accordance with § 76.601, such a log must be retained for the period specified in § 76.601(d).

§ 76.1707 Leased access.

If a cable operator adopts and enforces a written policy regarding indecent leased access programming pursuant to § 76.701, such a policy will be considered published pursuant to that rule by inclusion of the written policy in the operator's public inspection file.

§ 76.1708 Principal headend.

(a) The operator of every cable television system shall maintain for public inspection the designation and

location of its principal headend. If an operator changes the designation of its principal headend, that new designation must be included in its public file.

(b) Such records must be maintained in accordance with the provisions of § 76.1700(b).

§ 76.1709 Availability of signals.

(a) Effective June 17, 1993, the operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to § 76.56. Such list shall include the call sign, community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990.

(b) Such records must be maintained in accordance with the provisions of § 76.1700(b).

(c) A cable operator shall respond in writing within 30 days to any written request by any person for the identification of the signals carried on its system in fulfillment of the requirements of § 76.56.

§ 76.1710 Operator interests in video programming.

(a) Cable operators are required to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they have an attributable interest. These records must be made available to local franchise authorities, the Commission, or members of the public on reasonable notice and during regular business hours.

(b) "Attributable interest" shall be defined by reference to the criteria set forth in the Notes to § 76.501.

§ 76.1711 Emergency alert system (EAS) tests and activation.

Every cable system of 1,000 or more subscribers shall keep a record of each test and activation of the Emergency Alert System (EAS) procedures pursuant to the requirement of part 11 of this chapter and the EAS Operating Handbook. These records shall be kept for three years.

§ 76.1712 Open video system (OVS) requests for carriage.

An open video system operator shall maintain a file of qualified video programming providers who have requested carriage or additional carriage since the previous allocation of capacity. Information regarding how a video programming provider should apply for carriage must be made available upon request.

Note 1 to § 76.1712: An open video system operator will not be required to comply with the regulations contained in this section if there is no open capacity to be allocated at the end of the three year period described in § 76.1503(c)(2)(ii).

§ 76.1713 Complaint resolution.

Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. These records shall be maintained for at least a one-year period.

Note 1 to § 76.1713: Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

§ 76.1714 FCC rules and regulations.

(a) The operator of a cable television system shall have a current copy of part 76 and, if subject to the Emergency Alert System (EAS) rules contained in part 11 of this chapter, an EAS Operating Handbook, and is expected to be familiar with the rules governing cable television systems and the EAS. Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at nominal cost. Copies of the EAS Operating Handbook may be obtained from the Commission's EAS staff, in Washington, DC.

(b) The provisions of paragraph (a) of this section are not applicable to any cable television system serving fewer than 1000 subscribers.

(c) The licensee of a cable television relay station (CARS) shall have a current copy of part 78 of this chapter, and, in cases where aeronautical obstruction markings of antennas is required, part 17 of this chapter shall be available for use by the operator in charge. Both the licensee and the operator or operators responsible for the proper operation of the station are expected to be familiar with the rules governing cable television relay stations. Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at nominal cost.

§ 76.1715 Sponsorship identification.

Whenever sponsorship announcements are omitted pursuant to § 76.1615(f) of subpart T, the cable television system operator shall observe the following conditions:

(a) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(b) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list.

§ 76.1716 Subscriber records and public inspection file.

The operator of a cable television system shall make the system, its public inspection file, and its records of subscribers available for inspection upon request by an authorized representative of the Commission at any reasonable hour.

§ 76.1717 Compliance with technical standards.

Each system operator shall be prepared to show, on request by an authorized representative of the Commission or the local franchising authority, that the system does, in fact, comply with the technical standards rules in part 76, subpart K.

56. Add subpart V to part 76 to read as follows:

Subpart V—Reports and Filings

Sec.

Subpart V—Reports and Filings

§ 76.1800 Additional reports and filings.

In addition to the reports and filings required by this subpart, cable operators must provide all notifications which are required by § 1.1155 of this chapter (annual regulatory user fees). In addition, all cable systems subject to rate regulation must file FCC rate forms pursuant to the Commission's rate rules contained in subparts N and R of this part.

Note 1 to § 76.1800: Cable operators are required by the Copyright Act to make semi-annual filings of Statements of Account with the Licensing Division of the Copyright Office, Library of Congress, Washington, D.C. 20557.

Note 2 to § 76.1800: The Commission may require certain financial information to be submitted pursuant to Section 623(g) of the Communications Act, 47 U.S.C. 543(g).

§ 76.1801 Registration statement.

A system community unit shall be authorized to commence operation only after filing with the Commission the following information:

(a)(1) The legal name of the operator, entity identification or social security number, and whether the operator is an individual, private association, partnership, or corporation. If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied:

(2) The assumed name (if any) used for doing business in the community;

(3) The mail address, including zip code, and the telephone number to which all communications are to be directed;

(4) The date the system provided service to 50 subscribers;

(5) The name of the community or area served and the county in which it is located; and

(6) The television broadcast signals to be carried which previously have not been certified or registered.

(b) Registration statements shall be personally signed by the operator; by one of the partners, if the operator is a partnership; by an officer, if the operator is a corporation; by a member who is an officer, if the operator is an unincorporated association; or by any duly authorized employee of the operator.

(c) Registration statements may be signed by the operator's attorney in case of the operator's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reasons why the registration statement was signed by the operator. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

(d) The Commission will give public notice of the filing of registration statements.

§ 76.1802 Equal employment opportunity.

Each employment unit with six or more full-time employees shall file an annual employment report (FCC Form 395A) with the Commission on or before September 30 of each year, in accordance with § 76.77.

§ 76.1803 Aeronautical frequencies: signal list.

The operator of a cable system shall notify the Commission annually of all signals carried in the aeronautical radio frequency bands (108–137 and 225–400 MHz), noting the type of information carried by the signal (television picture, aural, pilot carrier, or system control, etc.). The timely filing of FCC Form 325, Schedule 2, will meet this requirement.

§ 76.1804 Aeronautical frequencies: leakage monitoring (CLI).

The operator of a cable system shall notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than $10-4$ watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands (108–137 and 225–400 MHz). Such notification shall include:

(a) Legal name and local address of the cable television operator;

(b) The names and FCC identifiers (e.g., CA0001) of the system communities affected;

(c) The names and telephone numbers of local system officials who are responsible for compliance with §§ 76.610 through 76.616 and § 76.1803;

(d) Carrier and subcarrier frequencies and tolerance, types of modulation and the maximum average power levels of all carriers and subcarriers occurring at any location in the cable distribution system;

(e) The geographical coordinates of a point near the center of the cable system, together with the distance (in kilometers) from the designated point to the most remote point of the cable plant, existing or planned, which defines a circle enclosing the entire cable plant;

(f) A description of the routine monitoring procedure to be used; and

(g) For cable operators subject to § 76.611, the cumulative signal leakage index derived under § 76.611(a)(1) or the results of airspace measurements derived under § 76.611(a)(2), including a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. The information described in this paragraph (g) shall be provided to the Commission prior to July 1, 1990 and each calendar year thereafter.

Note to § 76.1804(g): Timely filing of FCC Form 320, "Basic Signal Leakage Performance Report," will satisfy the annual filing requirement of paragraph (g).

§ 76.1805 Alternative rate regulation agreements.

Small systems owned by small cable companies must file with the Commission a copy of any operative alternative rate regulation agreement entered into with a local franchising authority pursuant to § 76.934(g), within 30 days after its effective date.

PART 100—DIRECT BROADCAST SATELLITE SERVICE

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

Authority: 47 U.S.C. 154, 303, 309, and 554.

§ 100.51 [Amended]

58. Section 100.51 of paragraph (e) is amended by removing "part 76, subpart E" and adding in its place "part 76, subparts E and U."

[FR Doc. 00–22470 Filed 9–1–00; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[WT Docket No. 97–82; FCC 00–313]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts modifications to the Commission's rules that will apply to Auction No. 35, the next broadband Personal Communications Services (PCS) C and F block auction, as well as any subsequent auctions of C and F licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future. We conclude that it is in the public interest to modify our auction and service rules for C and F block broadband PCS to achieve various goals.

DATES: Effective November 6, 2000.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin, Attorney, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Sixth Report and Order and Order on Reconsideration *("C/F Block Sixth Report and Order")* in the Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees. The complete text of the *C/F Block Sixth Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy

contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov/wtb/auctions.*

Synopsis of the C/F Block Sixth Report and Order

I. Introduction And Executive Summary

1. In the *C/F Block Sixth Report and Order* we address the tentative conclusions and proposals in our recent Further Notice of Proposed Rulemaking in this docket *("FNPRM")* and resolve the petitions that precipitated the *FNPRM. See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) licenses, Further Notice of Proposed Rulemaking, 65 FR 37092 (June 13, 2000). The modifications to the Commission's rules that we adopt in the order will apply to Auction No. 35, the next C and F block auction. The modifications also will apply to any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future.

2. We conclude that it is in the public interest to modify our auction and service rules for C and F block broadband Personal Communications Services (PCS) licenses to achieve the various goals of section 309(j) of the Communications Act. Specifically, in the *C/F Block Sixth Report and Order* we retain, clarify, and revise our rules, as follows:

- *Reconfiguration.* We will reconfigure each 30 MHz C block license available in Auction No. 35 and other future broadband PCS auctions into three 10 MHz C block licenses.
- *Tiers.* We divide Basic Trading Areas (BTAs) into two tiers according to the population size of the BTA. "Tier 1" will comprise BTAs with populations equal to or greater than 2.5 million; "Tier 2" will comprise the remaining BTAs.
- *Eligibility restrictions.* We remove the entrepreneur auction eligibility restrictions—thereby establishing "open" bidding—for the following licenses:
  - two of the three reconfigured 10 MHz C block licenses in Tier 1;
  - one of the three reconfigured 10 MHz C block licenses in Tier 2;
  - all 15 MHz C block licenses in Tier 1;
  - all F block licenses;
  - all C block licenses available but unsold in Auction No. 22.
- *License grouping.* We reject Nextel Communications, Inc. ("Nextel") proposal to license by bulk bidding.
- *"Grandfather" exception.* We clarify an applicant's eligibility for the § 24.709(b)(9)(i) C block "grandfather" exception after it has been involved in a merger, acquisition, or other business combination, as follows:
  - When each of the combining entities is individually eligible for the "grandfather" exception, the exception will extend to the resulting entity.
  - When one or more of the combining entities is not individually eligible for the grandfather exception, the resulting entity will be eligible for the exception only so long as an originally eligible entity retains *de facto* and *de jure* control of the resulting entity.
- *Bidding credits.*
- *Licenses won in open bidding:* We retain the existing bidding credits for small and very small businesses of 15 percent and 25 percent, respectively.
- *Licenses won in closed bidding:* We eliminate bidding credits.
- *Transfer requirements.*
- *Licenses won in open bidding:* We will not apply the entrepreneur eligibility restrictions to the assignment or transfer of control of C and F block licenses won in open bidding.
- *Licenses won in closed bidding:* Upon satisfaction of the first construction benchmark for a license won in closed bidding, entrepreneur eligibility restrictions on assignment or transfer of control of C and F block licenses will not apply to that license. We will continue to evaluate satisfaction of construction requirements on a license-by-license, rather than on a system-wide, basis.
- *Unjust enrichment:*
- A licensee that won a license in Auction No. 5 or 10, will not be subject to a bidding credit unjust enrichment payment upon assignment or transfer of that license, pursuant to the Commission's transfer requirements, to an entity not qualifying as a small business.
- *License cap.* We eliminate the § 24.710 cap on the number of C and F block licenses that a single entity may win at auction.
- *Spectrum cap.* We will continue to apply the spectrum cap to C and F block licenses, including those won in Auction No. 35.

II. Background

3. In the Omnibus Budget Reconciliation Act of 1993, Congress authorized the Commission to employ systems of competitive bidding to award spectrum licenses. This authorization, as amended, is codified as section 309(j) of the Communications Act. Section 309(j)(3) directs the Commission to "seek to promote" a number of objectives, including:

- the development and rapid deployment of new services for the benefit of the public, including those residing in rural areas;
- promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, *i.e.*, "designated entities;"
- recovery for the public of a portion of the value of the public spectrum resource made available for commercial use.

4. Section 309(j)(4) directs the Commission, in prescribing regulations to implement the objectives of section 309(j)(3), to, *inter alia*, (i) establish performance requirements to ensure prompt delivery of service to rural areas and prevent warehousing of spectrum by licensees; (ii) prescribe area designations and bandwidth assignments that promote an equitable geographic distribution of licenses and services, economic opportunity for a wide variety of applicants, including designated entities, and rapid deployment of services; and (iii) ensure that designated entities are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider using bidding preferences and other procedures.

5. The Commission outlined the original framework for C and F block auctions in the 1994 *Competitive Bidding Fifth Report and Order,* establishing the C and F blocks as "set-aside" licenses for "entrepreneurs" in which eligibility would be restricted to entities below a specified financial threshold. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Fifth Report and Order, 59 FR 37566 (July 22, 1994). The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C and F block licenses that had been returned to, or reclaimed by, the Commission.

6. Since adoption of the 1994 *Competitive Bidding Fifth Report and Order*, the rules for auctions of C and F block licenses have steadily evolved in response to legislative changes, judicial decisions, the needs of licensees striving to succeed in a rapidly developing wireless market, and the demand of the public for greater access to wireless services. For example, in the 1997 *C Block Second Report and Order*, 62 FR 55348 (October 24, 1997), as modified by the 1998 *C Block Reconsideration Order*, 63 FR 17111 (April 8, 1998), the Commission created a package of financial restructuring options to be offered to C block licensees experiencing financial difficulties in the wake of Auctions No. 5 and No. 10. The Commission also decided in the *C Block Second Report and Order*, as modified by the 1998 *C Block Fourth Report and Order*, 63 FR 50791 (September 23, 1998), to allow, for a period of two years from the beginning of the first post-restructuring C block auction (Auction No. 22), participation in bidding for C block licenses by entities that had participated in Auctions No. 5 and 10, even if such entities had since become too large to qualify as entrepreneurs under the Commission's rules.

7. Prior to the start of Auction No. 22, three C block licensees, NextWave Personal Communications, Inc. ("NextWave"), GWI PCS Inc. ("GWI"), and DCR PCS, Inc. ("DCR"), filed for bankruptcy protection. Bankruptcy filings and payment defaults by C and F block licensees occurred, both before and after the auction; and, to date, a total of 232 C and F block licenses, covering a population ("pops") of approximately 191 million, have been involved in bankruptcy proceedings and/or license payment defaults.

8. In January 2000, the Wireless Telecommunications Bureau ("Bureau"), pursuant to its delegated authority, announced the next C and F block auction, Auction No. 35. Auction No. 35 is slated to include both 30 MHz and 15 MHz C block licenses, as well as F block licenses (all 10 MHz each) for operation on frequencies for which previous licenses had automatically cancelled or had been returned to the Commission. The announcement of Auction No. 35 prompted petitions from SBC Communications Inc. ("SBC"), Nextel, and other parties asking that we waive, modify, or eliminate our entrepreneur eligibility requirements for participation in the auction. In response to those filings, several parties also proposed that we make other modifications to our C and F block rules. Additionally, US WEST Wireless, LLC ("US West") and Sprint Spectrum L.P. dba Sprint PCS ("Sprint") filed a joint petition for reconsideration of our *C Block Fourth Report and Order Reconsideration*, 65 FR 14213 (March 16, 2000). The *C Block Fourth Report and Order Reconsideration* addressed certain of the rules governing auctions of C block licenses. Sprint and US West requested that the Commission eliminate its eligibility restrictions for participation in the upcoming auction as well as modify other C block rules. In addition, Verizon Wireless ("Verizon") petitioned the Commission for clarification or reconsideration of our two-year C block auction eligibility "grandfather" rule, § 24.709(b)(9)(i). In response to these petitions, a number of parties argued that all, or at least some portion, of the C and F block spectrum should be open to all participants in order to satisfy the Commission's obligations section under 309(j)(4): other parties opposed these arguments.

9. We also received petitions from Bell Atlantic Mobile, Inc. ("Bell Atlantic"), BellSouth Corporation ("BellSouth"), AT&T Wireless Services, Inc. ("AT&T"), and GTE Service Corporation ("GTE") requesting that the Commission waive, forbear from applying, or declare inapplicable the Commercial Mobile Radio Services ("CMRS") spectrum cap with respect to the spectrum available in Auction No. 35.

10. We addressed the issues raised and points made in the various petitions, comments, and other documents filed in this proceeding in the *FNPRM*, released on June 7, 2000, in which we set forth tentative conclusions and proposals concerning our C and F block rules. Also on June 7, 2000, the Bureau announced that Auction No. 35 would begin on November 29, 2000, in order to allow resolution of the issues in the *FNPRM* and implementation of any rule changes prior to the auction. In the *C/F Block Sixth Report and Order*, we resolve the issues raised in the *FNPRM* and in the petitions and other filings in this proceeding by retaining, clarifying, and modifying our rules governing C and F block auctions and licenses.

III. Discussion

A. Reconfiguration of C Block Spectrum License Size

11. *Background.* In the *FNPRM*, we tentatively concluded that each 30 MHz C block license available in Auction No. 35 should be reconfigured into three 10 MHz C block licenses. We asserted that the increased number of licenses available as a result of this reconfiguration, along with elimination of certain of the Commission's C and F block eligibility requirements, would promote wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act. We tentatively concluded that a 10 MHz C block license is a viable minimum size for voice and some data services, including Internet access, and that it provides an appropriate building block for bidders that wish to acquire a larger amount of spectrum in particular markets. We sought comment on these tentative conclusions, as well as on whether a different configuration, such as creation of 20 MHz C block licenses where possible, would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular markets. Additionally, in the *FNPRM*, we proposed to permit bidders to aggregate the 10 MHz C block licenses, subject only to the CMRS spectrum cap and the relevant remaining eligibility restrictions for these licenses.

12. *Discussion.* We adopt our tentative conclusions in the *FNPRM* to reconfigure each available 30 MHz C block license into three 10 MHz C block licenses and to permit bidders to aggregate the 10 MHz C block licenses, subject to the CMRS spectrum cap and the relevant remaining eligibility restrictions for these licenses. Each 30 MHz C block license that is available for inclusion in the Commission's license inventory for Auction No. 35 or any subsequent auction, will be reconfigured into three 10 MHz C block licenses. Each of the newly reconfigured 10 MHz C block licenses will consist of two paired 5 MHz blocks: 1895–1900 MHz paired with 1975–1980 MHz; 1900–1905 MHz paired with 1980–1985 MHz; and 1905 MHz–1910 MHz paired with 1985–1990 MHz. Accordingly, we deny the Nextel Petition insofar as it requests a different reconfiguration of available 30 MHz C block licenses; and we grant the US West/Sprint Petition to the extent that it requests the reconfiguration we adopt today.

13. The majority of the commenters support our proposal to divide each available 30 MHz C block license into three 10 MHz C block licenses. They contend that dividing the spectrum into three 10 MHz C block licenses will promote a wider dissemination of licenses; provide bidders with more flexibility to adapt their bidding strategies to meet their business plans; and make licenses more affordable, especially for entrepreneurs. Some parties offer contingent support for reconfiguring the 30 MHz C block licenses, *e.g.*, provided that entrepreneur eligibility restrictions are

maintained in their current form, are modified as proposed in the *FNPRM*, or are eliminated for at most only a single 10 MHz C block license in each market. Other parties oppose the Commission's proposal, arguing that such a proposal is contrary to statutory requirements, because it will reduce small business opportunity in the marketplace. Additionally, some parties contend that 10 MHz of C block spectrum is insufficient to provide a full range of third generation ("3G") services.

14. We believe that 10 MHz is a viable broadband PCS license size. Ten MHz has always been one of the principal license sizes used in broadband PCS. In fact, half of the original licenses representing one-fourth of the total broadband PCS spectrum were 10 MHz licenses. In Auction No. 11, we made available to bidders almost 1,500 D, E, and F block licenses, all of which were for 10 MHz of spectrum. Virtually all of those licenses were sold; and, with the exception of licenses won by entrepreneurs with substantial C block holdings, almost none of the them have been returned to, or reclaimed by, the Commission. Moreover, we believe that 10 MHz broadband PCS block licenses provide opportunities to applicants, such as smaller companies and new entrants, that might not be able to acquire 20 or 30 MHz PCS licenses. In our recent *700 MHz First Report and Order*, 65 FR 3139 (January 20, 2000), where we established both 20 MHz and 10 MHz block licenses for wireless use, we noted that 10 MHz block wireless licenses "should prove of interest to parties in the record who desire spectrum to deploy innovative wireless technologies, including high-speed Internet access, that do not require as much spectrum." Those entities that want to obtain more than 10 MHz of C block spectrum where it is available in a BTA, retain the option of bidding on, or otherwise acquiring, as many of the available C block licenses as they are eligible for and aggregating them, or aggregating one or more newly acquired licenses with existing licenses.

15. Accordingly, we conclude that, by dividing each available 30 MHz C block license into three 10 MHz licenses, we can best address the diverse needs of the potential participants in the next C and F block auction. Entrepreneurs that continue to favor smaller blocks will still be able to fulfill their business needs. Parties that desire more spectrum for services will be allowed to aggregate the 10 MHz C block licenses, subject to the CMRS spectrum cap. We will continue to provide set-asides for some C block licenses to ensure that entrepreneurs are provided opportunities to acquire spectrum for their needs. We believe that this reconfiguration, along with the other rule modifications we make today, will ensure the best use of spectrum through the competitive bidding process while at the same time promoting wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act.

B. Eligibility Restrictions Under a Tiered Approach

16. *Background.* In the *FNPRM*, we proposed to remove the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions. We tentatively concluded that we should divide BTAs into two tiers according to population size of the BTA. "Tier 1" would comprise BTAs at and above a 2.5 million population threshold; "Tier 2" would comprise BTAs below that population threshold. We also sought comment on other population thresholds and on establishing a third tier. We tentatively concluded that we would allow "open" bidding (*i.e.*, bidding without eligibility restrictions) for two of the three newly reconfigured 10 MHz C block licenses in Tier 1 and one of the three newly reconfigured 10 MHz C block licenses in Tier 2. We also sought comment on whether there should be "open" bidding for all three of the 10 MHz licenses in Tier 1 and two of the three in Tier 2. With respect to available F block licenses, we sought comment on eliminating the eligibility requirements, or, alternatively, applying a tiered approach or retaining the existing eligibility rules. We tentatively concluded that we would allow "open" bidding for all available 15 MHz C block licenses, because they had not been sold in Auction No. 22. Finally, we sought comment on whether to establish a rule that lifts eligibility restrictions on any C or F block licenses that remain unsold after Auction No. 35 or after other future auctions.

17. *Discussion.* As described, we adopt our tentative conclusions and other proposals to remove the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions, utilizing the tiered approach outlined in the *FNPRM*. In the *FNPRM*, we discussed at some length the rationale behind those tentative conclusions and other proposals. We find in general that those reasons continue to apply and that they support the actions we take today. We elaborate further on our reasoning in light of the record we received in response to the *FNPRM*.

18. *Tiers.* Consistent with our tentative conclusion, we will divide all BTAs into two categories, "Tier 1" BTAs and "Tier 2" BTAs. Tier 1 will comprise BTAs with populations that, according to the 1990 census, are equal to or greater than 2.5 million; and Tier 2 will comprise the remaining BTAs. Commenters that support or oppose a tiered approach *per se* do so in the context of removing entrepreneur eligibility restrictions. Certain commenters take issue with our tentative conclusion to demarcate the two tiers at a population of 2.5 million, arguing, for example, that the upper tier should be enlarged to include BTAs with populations of one million or greater, *i.e.*, approximately the top ten percent of the BTAs in the United States, or that we should constrict Tier 1 to include only BTAs with populations over five million.

19. We believe that our decision to establish two tiers with a 2.5 million population demarcation represents the most reasonable balancing of the various competing public interest factors that bear on this issue. Both sides in this debate make credible arguments about their needs for additional spectrum. Because we have only a limited amount of spectrum to offer, we must respond with an approach to eligibility that necessarily will not fully satisfy all competing demands. Under these circumstances, we believe that the mid-course approach proposed in the *FNPRM*, which removes eligibility restrictions for some, but not all, of the available spectrum is the best course. The approach, in conjunction with the changes in entrepreneur eligibility restrictions described, will make relatively more spectrum available for "open" bidding in the most populous markets where the demand for spectrum by existing CMRS carriers is the greatest and the prospects of a spectrum shortage for these carriers is the most acute. At the same time, the modifications we make today will keep most of this spectrum (*i.e.*, 20 MHz) closed in all but the very largest markets, while also retaining restricted eligibility for some spectrum (*i.e.*, 10 MHz) even in those latter cases. Thus, entrepreneurs will have an opportunity to acquire additional spectrum on a set-aside basis in all available C block markets. We note that the tiering approach will split the C block spectrum available in Auction No. 35 almost equally, when weighted by population, between open and closed licenses. For these reasons, implementing our tentative conclusion

provides an effective method of accommodating the conflicting goals of entrepreneurs and non-entrepreneurs and satisfies our objectives under section 309(j).

20. *30 MHz and 15 MHz C block licenses.* For markets with available 30 MHz licenses, other than licenses that were available but unsold in Auction No. 22, we adopt our tentative conclusion and establish open bidding (*i.e.*, bidding without entrepreneur eligibility restrictions) for two of the three newly reconfigured 10 MHz C block licenses in Tier 1 and for one of the three newly reconfigured 10 MHz C block licenses in Tier 2. In Tier 1, the following two 10 MHz blocks will be open: 1900–1905 MHz paired with 1980–1985 MHz and 1905 MHz–1910 MHz paired with 1985–1990 MHz. In Tier 2, the following 10 MHz block will be open: 1905 MHz–1910 MHz paired with 1985–1990 MHz. For available 15 MHz C block licenses, other than for licenses that were available but unsold in Auction No. 22, we eliminate entrepreneur eligibility restrictions for licenses in Tier 1 but retain the restrictions for licenses in Tier 2.

21. A number of commenters oppose any relaxation of the Commission's entrepreneur eligibility restrictions. Some commenters argue that section 309(j) compels the Commission to maintain the C and F block set-aside as is. On the other hand, one commenter responds that nothing in section 309(j) or its legislative history necessitates a C and F block set-aside for entrepreneurs. Some parties that favor elimination of entrepreneur eligibility requirements believe that our tentative conclusion is too limited. These parties, which include most of the major, national carriers, would prefer that we remove entrepreneur eligibility restrictions from more—or all—of the available C and F block licenses. Other commenters ask that the reduction be smaller.

22. Section 309(j)(3) directs the Commission to seek to promote a variety of sometimes competing objectives, including economic opportunity, competition, and the rapid deployment of new technologies and services by, *inter alia*, disseminating licenses among a wide variety of applicants, including small businesses. Section 309(j)(4) requires the Commission to ensure that small businesses and others "are given the opportunity to participate in the provision of spectrum based services" and directs the Commission to consider the use of mechanisms that will further that end. The statute accords the Commission wide latitude in determining how to achieve the stated objectives. For example, section 309(j) does not mandate the use of set-asides, or any other particular method, to promote the participation of small businesses in spectrum auctions; and the Commission has conducted numerous auctions in recent years in which it has not provided an entrepreneurs' block set-aside. Similarly, section 309(j)(3) does not require the Commission to promote the participation of small businesses in PCS auctions at the expense of other, potentially conflicting, objectives enumerated in the section, such as the promotion of competition and the rapid deployment of new technologies and services. Finally, section 309(j)(4)(D) does not require the Commission to ensure that licenses actually are granted to small businesses but, rather, requires only that these small businesses be given the *opportunity* to participate in the provision of spectrum-based services.

23. We believe that by implementing our tentative conclusion we give effect to, and reasonably balance, as many of the various and partially conflicting section 309(j) objectives as possible. As discussed in the *FNPRM*, circumstances in the PCS industry have changed dramatically, and continue to change, since the implementation of our rules in 1994. The introduction of wireless Internet, advanced data, and 3G services, and global competition within these services, has created a shortage of suitable available spectrum. Many carriers claim that obtaining additional spectrum to provide such services or satisfy capacity needs is crucial to their business plans. Still other carriers require additional spectrum to "fill out" regional or national service areas. Taking all of our statutory objectives into account, we believe that it is fair and appropriate to apportion the spectrum to accommodate these interests. Apportioning the 30 MHz C block licenses in the manner described will enable larger carriers to obtain additional spectrum, which, we find, will promote the further development of CMRS competition and innovation, especially in larger markets. At the same time, maintaining a significant set aside of C block spectrum for entrepreneurs will help smaller businesses in this band continue to achieve their business goals as well as providing meaningful opportunities for new entrepreneurial firms to enter the market. Entrepreneurs will retain exclusive eligibility to bid on 10MHz of available C block spectrum in Tier 1 markets and on most of the first-time reauctioned C block spectrum in Tier 2 markets. Entrepreneurs also will be eligible to participate, along with non-entrepreneurs, in all open bidding.

24. *F block licenses.* We adopt open bidding—bidding without entrepreneur eligibility restrictions—for F block licenses available in Auction No. 35 and in all future auctions. No commenter advocates a middle ground for the F block, such as disaggregating the F block spectrum into smaller spectrum blocks or applying a tier structure to the F block and removing eligibility restrictions for some of the available licenses. Commenters argue, instead, either for maintaining the entrepreneur restrictions for all F block licenses or for lifting these restrictions entirely. Some parties that favor maintaining the set-aside contend that entrepreneurs have made business plans in reliance on their ability to vie for additional F block licenses in future closed auctions. Some argue that the Commission is constrained by section 309(j) from eliminating the eligibility restrictions. Others point out that the Commission's proposals for modifying eligibility restrictions for C block licenses represent a substantial reduction in the set-aside and contend that the Commission should go no further. Finally, parties believe that, because the F block does not share the C block's history of financial difficulty, there is less, if any, justification for eliminating the F block set-aside.

25. Conversely, commenters supporting the lifting of F block entrepreneur eligibility restrictions argue that the lack of financial difficulties in the F block indicates no further need for continued protection in the form of a set-aside. Other commenters assert that eliminating the F block set-aside would further the goals of section 309(j) by alleviating spectrum congestion, promoting new services, and advancing competition.

26. We believe that it is in the public interest, and consistent with section 309(j), to remove the set-aside for all available F block licenses. As we stated in the *FNPRM*, and as some commenters underscore, the F block has evolved in a fashion largely distinct from that of the C block. The two blocks have been subject to increasingly different regulatory requirements, reflecting in large part the different bidding and marketplace histories of the two blocks and the correspondingly different equity and reliance concerns applicable to bidders and licensees in each of the blocks. Accordingly, as we have recognized previously, there is no longer a rationale for attempting to treat the two blocks in an identical fashion. Moreover, the need for additional open spectrum that exists in the C block

markets also applies in the F block markets; and allowing open eligibility for all available F block licenses might lead to more expeditious provision of service to consumers. Moreover, as discussed in the *FNPRM*, almost every market with an available F block license already has a significant 30 MHz C block entrepreneur presence. Thus, we can modify the F block eligibility rules while preserving the diversity of opportunity and service that are goals of section 309(j).

27. *Unsold set-aside licenses.* For Auction No. 35, we eliminate entrepreneur eligibility requirements for all C block licenses that were available but not sold in Auction No. 22. For all auctions after Auction No. 35, we eliminate the entrepreneur eligibility requirements for any C or F block license that was available, but not sold, in Auction No. 22 or any subsequent auction. In the *FNPRM*, we proposed removing eligibility restrictions for available 15 MHz C block licenses, reasoning that they remained unsold after having been offered in closed bidding in Auction No. 22. We similarly proposed to remove eligibility restrictions on all C and F block licenses that are available, but not sold, in Auction No. 35 as well as on *all* broadband PCS licenses that remain unsold after having been available for closed bidding in any auction after Auction No. 35.

28. The failure of certain 15 MHz C block licenses to sell in Auction No. 22 indicates that closed bidding for these licenses will not necessarily result in their acquisition and construction and in service to the public. By lifting the eligibility restrictions for these unsold licenses now, we hope to prevent additional delays in their utilization. We find persuasive Nextel's argument that the same rationale that applies to 15 MHz C block licenses should apply to 30 MHz C block licenses, and we believe that the rationale is equally applicable to all C and F block licenses that have failed to sell in Auction No. 22 or any subsequent auction. We note that no commenter opposed Nextel's suggestion to extend our proposal. Accordingly, we will implement the rule change for all C or F block licenses that were available, but not sold, in Auction No. 22 or that remain unsold after having been available for closed bidding in Auction No. 35 or in any auction thereafter.

C. Determination of Entrepreneur Eligibility

29. *Background.* To qualify as an entrepreneur under current rules, a C or F block applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than $125 million in each of the last two years and must have total assets of less than $500 million at the short-form deadline. Total assets are generally determined by the applicant's most recent audited financial statements. As discussed, the grandfather exception provides that, in addition to entities qualifying as entrepreneurs at the time of the short form filing deadline, any entity that was eligible for and participated in either of the first two C block auctions will be eligible to bid in any auction of C block spectrum that begins within two years of the March 23, 1999 start date of Auction No. 22. Each C or F block licensee, whether its license was acquired at auction or by transfer or assignment, must maintain its entrepreneur eligibility during the five-year holding period, which begins on the date of the initial license grant, except that a licensee's increased gross revenues or increased total assets due to nonattributable equity investments, debt financing, revenue from operations or other investments, business development, or expanded service will not be considered. With respect to applications for assignment or transfer of control of C or F block licenses during the five-year holding period, the proposed transferee or assignee must meet the entrepreneur eligibility criteria at the time the assignment or transfer application is filed or the proposed transferee or assignee must already hold other C or F block licenses and, at the time of receipt of such licenses, have met the entrepreneur eligibility criteria.

30. *Discussion.* In its comments, Nextel asks that the Commission review its rules on reporting "total assets" for entrepreneur eligibility and require applicants to report total assets as of the short form filing deadline. Nextel asserts that Leap Wireless International, Inc. ("Leap") may try to qualify for Auction No. 35 based on the unavailability, at the short-form filing deadline, of Leap's audited financial statement for its fiscal year ending August 31, 2000. In reply, Leap states that departing from a clear, bright-line test that uses credible audited numbers could facilitate manipulation of the eligibility calculations. Leap states that there is no need for it to "slip in" under the asset cap since the current rules allow it to remain eligible to participate in future C and F block auctions, even if its assets exceed $500 million due to growth allowable under § 24.709(a)(3). In short, Leap claims that the natural growth exception which allows C or F block licensees to retain their entrepreneur eligibility during the holding period establishes its eligibility for the upcoming C block auction, Auction No. 35.

31. Leap confuses the concept of maintaining entrepreneur eligibility for the purpose of meeting the five-year holding period with the concept of eligibility to participate as an entrepreneur in a C or F block auction. By allowing licensees to maintain their eligibility despite growth beyond the financial caps, the Commission intended to encourage entrepreneurs to grow and succeed during the five-year holding period. Contrary to Leap's assertions, although the Commission intended to ignore natural growth for purposes of entrepreneur eligibility during the five-year holding period, it did not intend to ignore such growth in determining eligibility to participate in future C and F block auctions. In other words, Leap, which is not eligible for the grandfather exception, would have us read the natural growth rule, that allows a licensee to maintain eligibility for the holding period despite growth beyond the financial caps, as an alternative grandfathering exception. If the Commission had intended the natural growth rule to be read as Leap contends, then the two-year grandfather exception for Auction No. 5 participants would have been more narrowly drafted. Instead, the Commission applied the grandfather exception to all entities that had qualified for, and participated in, either of the first two C block auctions.

32. Nextel's comments raise the issue of whether eligibility for C block auctions is determined by an applicant's most recently available audited financial statements, even if those statements are then a year or more out of date, or whether eligibility should be based on the relevant financial data as of the most recently completed calendar/fiscal year, even if audited financial statements for the most recent year are not available as of the short-form filing deadline. Under § 24.720, an entrepreneurs' block applicant must evidence its gross revenues and total assets with its most recent audited financial statements, or, if the applicant does not otherwise use audited financial statements, a certification by the applicant's chief financial officer or its equivalent. We see no need to modify these rules. We note, however, that we expect an applicant to obtain financial statements within a reasonable period of time after the close of the applicable calendar or fiscal year and to base its claim to eligibility on those financial statements. If an applicant delays, or

takes action that results in delay in, the generation and/or submission of current audited financial statements in order to capture entrepreneur eligibility to which the applicant would otherwise not be entitled, it will risk being declared ineligible for auction participation or license grant or jeopardize its continuing eligibility to hold its licenses.

D. License Grouping for Bids and Competitive Bidding Design

33. *Background.* In the *FNPRM*, we tentatively concluded that we would take bids separately on each license in Auction No. 35 on a simultaneous multiple round basis as we have done in the past. We agreed with commenters that Nextel's bulk bid proposal, under which the Commission would reconfigure the available 30 MHz C block licenses into separate 20 MHz and 10 MHz licenses and offer the newly created 20 MHz C block licenses and the available 15 MHz C block licenses together on a "bulk bid" (*i.e.*, winner-take-all) basis, would exclude all but a very few competitors. We stated that small entities would be hard pressed to obtain the financing necessary to win and pay for the licenses and construct the systems included in the bulk bid proposal, while many other carriers would be constrained from participating by the CMRS spectrum cap. We noted that our past auctions demonstrate that significant aggregations of licenses through the auction process are feasible and that bidding for each license separately is unlikely to preclude carriers from aggregating licenses on a nationwide or regional basis.

34. At the same time, we explained that we were considering implementation of a combinatorial, or package, bidding design for the auction of licenses in the 700 MHz bands in order to facilitate aggregations of complementary licenses into larger blocks. We invited parties to suggest ways in which bidders could efficiently aggregate licenses in Auction No. 35; although, we noted that it might be impractical to implement a package bidding design for that auction.

35. *Discussion.* We reject Nextel's bulk bid proposal. Instead, we leave to the Wireless Telecommunications Bureau ("Bureau"), under its existing delegated authority, the final selection of a competitive bidding design and methodology for Auction No. 35, including the decision whether or not to implement a combinatorial bidding design for the auction. There is no support in the record for the Nextel bulk bid proposal. We continue to be concerned that, as argued by the bulk bid opponents, Nextel's suggested approach would unduly favor Nextel to the possible exclusion of most other potential applicants.

36. Some of the parties that commented on ways to aggregate licenses in the auction process, argue against the use of package bidding for Auction No. 35, on the ground that such a design would be complex and impractical. Other commenters support implementation of package bidding as a way to enhance the ability of auction participants to acquire their targeted groups of licenses while reducing their exposure. In preparing for Auction No. 35, the Bureau, under its existing delegated authority and pursuant to public notice and comment, will determine the competitive bidding design most appropriate for the auction. Following the Bureau's determination of the auction design, we will, if necessary, revisit the need for any rule modifications.

E. Grandfather Exception

37. *Background.* In the *FNPRM*, the Commission tentatively concluded that upon the merger of two entities, the grandfather exception contained in § 24.709(b)(9)(i) should extend to the resulting entity when each of the two original entities is eligible for the exception, but not when only one of them is eligible for the exception. The Commission sought comment on how to determine C and F block eligibility when faced with more complex transactions. The Commission also sought comment on issues raised by Verizon in its petition for reconsideration or clarification of the *C Block Fourth Report and Order Reconsideration*. Verizon asks us to reexamine the grandfather exception and limit resulting eligibility to those Auction No. 5 and 10 participants that won licenses in the auctions and then returned spectrum pursuant to the Commission's C block restructuring options. Verizon also proposes that the entity claiming the grandfather exception must be the same company—having substantially the same ownership and control—as the one that acquired the entrepreneur status.

38. *Discussion.* We clarify an applicant's eligibility for the grandfather exception after it has been involved in a merger, acquisition, or other business combination, as follows. When each of the combining entities is individually eligible for the "grandfather" exception, the exception will extend to the resulting entity. When one or more of the entities are not individually eligible for the grandfather exception, the resulting entity will be eligible for the exception only so long as an originally eligible entity retains *de facto* and *de jure* control of the resulting entity.

39. We deny the Verizon petition to the extent that it asks that the exception be available only to Auction No. 5 and 10 participants that won licenses in those auctions and then returned spectrum. Despite its narrowly worded caption, the rule codifying the grandfather exception is clear on its face. It applies not just to Auction No. 5 and 10 participants that returned spectrum to the Commission but also to participants in either of those auctions that either won no licenses or won licenses but did not disaggregate or return spectrum. We deny the remainder of the Verizon petition as moot in light of our clarification of the application of the grandfather exception to an auction applicant that has been involved in a business combination.

40. We do not believe that, when entities eligible for the grandfather exception combine, the resulting entity should be penalized. Accordingly, we clarify that, under such circumstances, the grandfather exception will extend to the resulting entity. For situations where at least one of the entities is not individually eligible for the grandfather exception, we find persuasive the suggestion that we adopt a simple control analysis to determine whether an entity is "substantially the same" as the prior auction participant in Auction No. 5 or 10. Pursuant to this reasoning, the grandfather exception should be available to the resulting entity, so long as at least one entity that was originally eligible for the grandfather exception retains *de facto* and *de jure* control over the resulting entity. Other than to make these clarifications, we see no need to modify the grandfather exception, which will apply to auctions of C block licenses that begin on or before March 23, 2001.

F. Bidding Credits

41. *Background.* In the *FNPRM*, we sought comment on whether we should make adjustments to the current C and F block bidding credits for future auctions based on whether such auctions are open to all bidders or subject to eligibility restrictions. More specifically, we sought comment on whether we should retain existing small and very small business bidding credits (15 percent and 25 percent, respectively) for licenses subject to open bidding or increase them to 25 percent and 40 percent, respectively. For licenses subject to closed bidding, we sought comment on whether we should increase the bidding credits, retain them

at the current level, or eliminate them entirely.

42. *Discussion.* For licenses subject to open bidding, we will maintain the current level of bidding credits for small and very small businesses and consortia thereof, of 15 percent and 25 percent, respectively. For licenses subject to closed bidding, we will eliminate all bidding credits. While a number of commenters, primarily small and very small businesses, support an increase in bidding credits for licenses won in open bidding, other parties contend that the existing bidding credits would enable small and very small businesses to compete successfully in open auctions. We agree with the latter contingent that bidding credits of 15 and 25 percent will allow effective competition by small businesses in open C and F block bidding. We note that in our Specialized Mobile Radio (SMR) 900 MHz auction—using bidding credits of 10 percent and 15 percent—75 percent of the winning bidders were small businesses, winning 26 percent of the licenses. Moreover, in Auction No. 11, the auction of D, E, and F block licenses, small and very small business were the high bidders for 141 of the 986 D and E block licenses won in that auction, even though bidding credits are not available for D and E block licenses.

43. With respect to closed bidding, we believe that the continued use of bidding credits in restricted auctions would not necessarily serve its intended purpose. As we explained in the *FNPRM,* among those eligible to participate in entrepreneurs' block auctions, some well capitalized new entities with small gross revenues qualify for bidding credits, while some older companies with small total assets and net revenues but high gross revenues do not. One commenter asserts that bidding credits in set-aside auctions "simply skew these auctions in favor of well-capitalized applicants that are carefully structured to shield deep-pocketed investors from attribution." Furthermore, the results of Auction No. 11 suggest that if small and very small businesses can compete effectively in open bidding without bidding credits, they can certainly compete effectively in closed bidding without bidding credits.

G. Transfer Requirements

i. Open bidding

44. *Background.* In the *FNPRM,* we proposed to modify the transfer restrictions for C and F block licenses to correspond to our proposed changes in entrepreneur eligibility requirements and to encourage rapid construction of C and F block systems. We tentatively concluded that C and F block licenses won pursuant to open bidding at Auction No. 35, or in any future open auction for such spectrum, would not be subject to the restrictions against transfers to non-entrepreneurs.

45. *Discussion.* Pursuant to our tentative conclusion, we will not subject C and F block spectrum licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, to a five-year holding and limited transfer rule. Thus, such licenses may be transferred or assigned at any time after grant to any qualified entity, entrepreneur or not. Several commenters support removing the transfer restrictions for C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum. None of the commenters urge maintaining transfer restrictions on licenses won in open bidding. The only purpose for restricting the transfer of C and F block licenses to non-entrepreneurs is to ensure the integrity of the set-aside auction process. Because these licenses will now be subject to competitive bidding in open auctions, there is no longer a need to restrict their transfer and assignment solely to entrepreneurs.

ii. Closed bidding

46. *Background.* With respect to licenses won in closed bidding in any C or F block auction, past or future, we sought comment on tying the holding period to completion of build-out requirements. Under our proposal, a licensee would be able to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by our rules. In this way, we sought to minimize the trafficking of C and F block licenses won pursuant to closed bidding, while enhancing the likelihood of early build-out.

47. *Discussion.* We will allow a licensee to assign or transfer a license won in closed bidding to any qualified entity, entrepreneur or not, as soon as the licensee has satisfied its first construction benchmark. The decision to transfer a restricted license to a non-entrepreneur before the end of the five-year holding period in this manner must be made affirmatively by those in control of the entrepreneur. As discussed, even under our modified rule, an early transfer or assignment may be subject to unjust enrichment payment requirements.

48. Most commenters that addressed this issue support the elimination of transfer restrictions upon completion of the first construction benchmark for licenses won in closed bidding in any C or F block auction, past or future. Other commenters advocate retention of the transfer restrictions in "closed" auctions. In our estimation, permitting such assignments and transfers will encourage rapid build-out and service to the public, two objectives of section 309(j), while at the same time providing C and F block licensees with the ability to access capital. The result should be increased competition and more efficient spectrum use.

49. Normally, if a C or F block licensee that used a bidding credit assigns or transfers its license within the first five years after the initial license grant date to an entity not qualifying for a bidding credit, or as favorable a bidding credit, the licensee is subject to an unjust enrichment payment requirement. In the case of early transfers or assignments of C block licenses won in Auctions No. 5 and 10, where virtually all bidders, and all license winners, qualified for a single 25 percent bidding credit, we see no purpose in requiring the payment. When all bidders are given the same bidding credit, the competitive effect is the same as if no bidder has a credit. Thus, bidding credits likely did not affect the outcome of those auctions in terms of who won or how much money was paid to the government. Accordingly, allowing the early sale of a C block license by an Auction No. 5 or 10 licensee would not constitute unjust enrichment. When there is an early transfer or assignment of a license won in Auctions No. 11 or 22, or of any other license won in closed bidding, we will continue to require any applicable unjust enrichment payment. In Auctions No 11 and 22, where two levels of bidding credits were used and a significant number of bidders and winners did not receive a bidding credit, the use of such credit by some bidders may well have influenced the results of the auction.

iii. System-wide satisfaction of construction benchmark

50. *Background.* In the *FNPRM,* we sought comment on whether we should, under certain circumstances, evaluate an incumbent licensee's compliance with construction requirements on a system-wide basis. Noting that at least one carrier had argued that it needs the flexibility to sell and exchange licenses in order to restructure its business plans, we sought comment on whether we should allow a carrier to exchange and transfer licenses if the carrier can demonstrate "substantial service" throughout its system, rather than in a

particular market. We also sought comment on any other modifications to our transfer restrictions that would provide incumbent licensees with the flexibility to restructure their business plans without decreasing their incentive to rapidly construct systems and place them into operation.

51. *Discussion.* Although several commenters urge us to do so, we do not believe that we should allow a carrier to exchange and transfer licenses where the carrier can demonstrate "substantial service" throughout its system, but not in the particular market that would be affected by the transfer. Although permitting such transfers might provide incumbent licensees with the flexibility to restructure their business plans, we believe that it would also remove an important incentive for carriers to construct systems rapidly and place them into operation in all markets where they are licensed. If we adopt a system-wide "substantial service" standard, carriers may choose to build out selectively in more populous markets at the expense of less populated areas in anticipation of transferring or exchanging licenses. Also, an entrepreneur could acquire a license in a closed auction and immediately sell the newly acquired—and wholly unconstructed—license on the open market so long as the entrepreneur satisfied the system-wide standard, even with the newly acquired license included in its "system." We do not think that such a result is consistent with making licenses available for closed bidding by entrepreneurs.

H. License Cap

52. *Background.* In the *FNPRM,* we tentatively concluded that we would remove from the Commission's rules § 24.710, which prohibits an auction applicant from winning (but not from acquiring in the secondary market) more than 98 C and F block licenses.

53. *Discussion.* We adopt our proposal to remove § 24.710 from the Commission's rules. When established in 1994, this license cap was intended to facilitate a fair distribution of licenses within the C and F blocks by preventing an entity from winning more than approximately 10 percent of the then-total of 986 D and F block licenses. In the *FNPRM,* we explained that the Commission has already achieved its objective of disseminating the C and F block licenses among a variety of entrepreneurs. While most commenters agree that the license cap has outlived its purpose, a few believe that the cap is still necessary to prevent big applicants from acquiring large numbers of licenses. We believe that the license cap is no longer necessary. Not only is there already substantial diversity among C and F block licensees, but our decision today to reconfigure each available 30 MHz C block license into three 10 MHz licenses—tripling the number of available C block licenses—and to eliminate the eligibility restrictions for many of the available C block licenses, and all of the available F block licenses, should enhance that diversity.

I. Spectrum Cap

54. *Background.* In the *FNPRM,* we tentatively concluded that we would continue to apply the CMRS spectrum cap, as set forth in § 20.6 of the Commission's rules, to the spectrum awarded in the upcoming C and F block auction. Almost a year ago, we determined in our *Biennial CMRS Spectrum Cap Order,* 64 FR 54564 (October 7, 1999), that the CMRS spectrum cap, with some modification, continued to be an efficient means to promote competition and protect the public interest. In addition, we established and clarified a process by which any carrier with a demonstrable need for additional spectrum to provide 3G or other advanced services in a particular geographic area could seek a waiver of the spectrum cap rule. Finally, we stated that we would be reexamining whether to retain, modify, or eliminate the CMRS spectrum cap as part of our year 2000 biennial review.

55. *Discussion.* We conclude that we will continue to apply the CMRS spectrum cap to the C and F block licenses to be auctioned. Those parties requesting that the cap be eliminated with respect to this spectrum have not provided sufficient bases in the record to revise a rule or eliminate the cap in the context of this particular auction of initial licenses.

56. In the comments on this *FNPRM,* almost all of the commenters supported our tentative conclusion not to eliminate the CMRS spectrum cap with respect to these C and F block licenses. They agreed with our general conclusion that the parties requesting elimination of the cap have not provided the Commission sufficient bases for revising the CMRS spectrum. Only four commenters, including three of the parties that petitioned the Commission earlier this year, opposed our tentative conclusion; they did not, however, supply any additional substantive arguments to those raised in the petitions filed earlier this year.

57. As we indicated in the *FNPRM,* we did not find that those petitions requesting waiver, or limited forbearance from application, of the CMRS spectrum cap were persuasive. In requesting waiver or forbearance, AT&T, Bell Atlantic, BellSouth, and GTE only supplied very general assertions that, absent lifting of the cap, they would face considerable difficulty rolling out 3G and other advanced broadband services. We agree with most of the commenters to the petitions that the petitioners failed to satisfy the waiver standard set forth either in the *Biennial CMRS Spectrum Cap Order* or in § 1.3 of the Commission's rules. We also agree that Bell Atlantic failed to establish the basis for reversing our determination that the spectrum cap promoted the public interest, as would be necessary for granting a forbearance request. Finally, we find unpersuasive GTE's argument that the CMRS spectrum cap does not apply to the C and F block spectrum in the upcoming auction, and therefore deny its request for a declaratory ruling.

58. As a practical matter, we believe that our decision to reconfigure the 30 MHz blocks of C block spectrum into 10 MHz blocks will better enable all carriers to obtain additional spectrum in the vast majority of markets without the need to exceed the CMRS spectrum cap. In only a few locations have carriers accumulated spectrum up to the CMRS spectrum cap limits, either the general 45 MHz cap or the 55 MHz cap that applies to rural areas. More particularly, in the upcoming C and F block auction, almost all carriers in every market could obtain additional spectrum in blocks of 10 MHz (or 15 MHz where applicable) and still comply with the spectrum cap without any need for disaggregation. Finally, as we noted, we will shortly issue a Notice of Proposed Rulemaking as part of our biennial review of the spectrum cap rule. That proceeding will provide the Commission a better opportunity to revisit, in a more comprehensive manner than in this context, issues pertaining to the CMRS spectrum cap, taking into consideration existing competitive conditions and technological developments that could affect the continued need for the cap.

IV. Procedural Matters And Ordering Clauses

A. Final Regulatory Flexibility Analysis

59. Pursuant to the Regulatory Flexibility Act, the Final Regulatory Flexibility Analysis incorporated herein. *See* 5 U.S.C. 604.

B. Paperwork Reduction Act Analysis

60. The *C/F Block Sixth Report and Order* contains neither a new nor a modified information collection.

C. Ordering Clauses

61. Authority for issuance of the *C/F Block Sixth Report and Order* is contained in sections 4(i), 5(b), 5(c)(1), 309(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 155(b), 156(c)(1), 303(r), and 309(j). Accordingly, it is ordered that part 24 of the Commission's rules is amended as specified and become effective November 6, 2000.

62. It is further ordered that the Commission's Consumer Information Bureau, Reference Operations Division, shall send a copy of the *C/F Block Sixth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Regulatory Flexibility Analysis

63. As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the *FNPRM*. The Commission sought written public comment on the tentative conclusions, proposals, and alternatives in the *FNPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

A. Need for, and Objectives of, the C/F Block Sixth Report and Order in WT Docket No. 97–82

64. This *C/F Block Sixth Report and Order* addresses the tentative conclusions and proposals in our recent *FNPRM* and also resolves the petitions that precipitated the *FNPRM*. The modifications to the Commission's rules that we adopt in this order will apply to Auction No. 35, a C and F block auction currently scheduled to begin on November 29, 2000. The modifications will also apply to any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future.

65. We conclude that it is in the public interest to modify our auction and service rules for C and F block broadband Personal Communications Services ("PCS") licenses to achieve the various goals of section 309(j) of the Communications Act. In reaching this conclusion, we recognize that many carriers, including small and very small businesses, need additional spectrum to "fill out" their service areas or to satisfy capacity needs. Although our modifications to the rules include the elimination of entrepreneur eligibility requirements (allowing open bidding) for some C and F block licenses, our revised rules provide entrepreneurs with a significant set-aside of C block spectrum (for closed bidding) in order to assist them in achieving their business goals. Section 309(j) does not mandate the use of set-asides to promote the participation of small businesses in spectrum auctions. In fact, we note that there have been numerous auctions in recent years in which we have not included an entrepreneurs' block set-aside. By maintaining a significant set aside for entrepreneurs, small and very small businesses will be given the opportunity to participate in the provision of spectrum-based services. Additionally, in open auctions, small and very small businesses will continue to be provided with bidding credits in order to ensure meaningful participation. The *C/F Block Sixth Report and Order* reflects the Commission's continuing commitment to encouraging participation by small businesses while at the same time helping to ensure the best use of spectrum through the competitive bidding process.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

66. There were no comments filed directly in response to the IRFA. However, a number of parties did submit general comments on the Commission's tentative conclusions and proposals set forth in the *FNPRM*. The significant issues raised by small and very small businesses primarily concerned the removal of the entrepreneur eligibility restrictions for some licenses available in future C and F block auctions and the use of bidding credits. For example, some commenters opposed the Commission's proposal to reconfigure the available 30 MHz C block license into three 10 MHz C block licenses, arguing that such a proposal is contrary to statutory requirements, because it will reduce small business opportunity in the marketplace. Many of the commenters that opposed the reconfiguration, contended that 10 MHz of C block spectrum is insufficient to provide a full range of third generation ("3G") services. In addition, a number of commenters opposed any relaxation of the Commission's entrepreneur eligibility restrictions. Some commenters argued that section 309(j) compels the Commission to maintain the C and F block set-aside as is. In addition, small and very small businesses supported an increase in bidding credits in open bidding.

67. On the other hand, a number of larger entities, including most of the major national carriers, favored the elimination of eligibility restrictions from more, or all, of the available C and F block licenses. Many carriers claimed that obtaining additional spectrum to provide advanced telecommunications services and global competition within these services, or to satisfy capacity needs, was crucial to their business plans. In addition, these carriers stated that they require additional spectrum to complete regional or national service areas. As required by the RFA, and in light of the numerous comments received, the Commission considered the economic impact on small businesses of the rules adopted herein. *See* section E, *infra*.

C. Description and Estimate of the Number of Small Entities to Which the Rules Apply

68. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. Generally, the RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one which: (i) is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) meets any additional criteria established by the Small Business Administration ("SBA"). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations." "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 local governments in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

69. The rule changes effected by the *C/F Block Sixth Report and Order* affect all small entities that choose to participate in the upcoming auction of C and F block spectrum and other future auctions of C and F block spectrum, including small businesses currently holding C and F block licenses, and other small businesses that may participate in and/or acquire licenses through the auction. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has auctioned licenses in each block. Frequency blocks C and F were originally designated by the Commission as "entrepreneurs' blocks," and participation in past auctions of C and F block licenses was limited to entities qualifying under the Commission's rules as entrepreneurs. The Commission's rules define an entrepreneur as an entity (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) that had gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the FCC Form 175 application was filed. For blocks C and F, the Commission has defined "small business" as a firm, together with its affiliates, that had average gross revenues of not more than $40 million in the three previous calendar years, and "very small business" has been defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These definitions have been approved by the SBA.

70. On May 6, 1996, the Commission concluded the first broadband PCS C block auction. On July 16, 1996, the second C block auction closed. On January 14, 1997, the broadband PCS D, E, and F block auction closed. Ninety (90) bidders (prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in these C and F block auctions were eligible for bidding credits and installment payment plans. On April 15, 1999, Auction No. 22, which included 347 C and F block licenses, closed.

71. On January 12, 2000, the Wireless Telecommunications Bureau ("Bureau") announced an auction of broadband PCS C and F block licenses scheduled for July 26, 2000 (Auction No. 35). At that time, under the Commission's eligibility rules, in order to participate in an entrepreneur auction, a C or F block applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than $125 million in each of the last two years and must have total assets of less than $500 million. Following the announcement of Auction No. 35, the Commission received several formal requests to waive, modify, or eliminate the C and F block auction and service rules in order to allow companies other than entrepreneurs to participate in the upcoming PCS auction. The Commission addressed the issues raised in the various petitions, comments, and other documents filed in this proceeding in *FNPRM*, in which we set forth tentative conclusions and proposals to retain, clarify, and modify our rules related to the C and F block auctions and service. In addition, on June 7, 2000, the Bureau announced that Auction No. 35 would begin on November 29, 2000, in order to allow resolution of the issues in the *FNPRM* and implementation of any rule changes prior to the auction. In the *C/F Block Sixth Report and Order*, we resolve the issues raised in the *FNPRM* and in the petitions and other filings in this proceeding by retaining, clarifying, and modifying our rules governing C and F block auctions and licenses.

72. Auction No. 35 is slated to include C block licenses as well as F block licenses for operation on frequencies for which previous licenses had automatically cancelled or had been returned to the Commission. For purposes of our evaluations and conclusions in this IRFA, we assume that all of the original 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by the *C/F Block Sixth Report and Order* are small entities. In addition to the 178 original small business licensees that may participate in the auction of the C block licenses, a number of additional small business entities may seek to acquire licenses through auction; thus, these business entities would be affected by these rules.

D. Description of Reporting, Recordkeeping, and Other Compliance Requirements

73. The *C/F Block Sixth Report and Order* does not impose new reporting, recordkeeping, or other compliance requirements upon auction participants. As customary, auction participants will need to follow the standard procedural rules used for broadband PCS spectrum auctions, including application and payment rules.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

74. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603.

75. The Commission concludes that it is in the public interest to modify our auction and service rules for C and F block broadband Personal Communications Services (PCS) licenses to achieve the various goals of section 309(j) of the Communications Act. Specifically, in this *C/F Block Sixth Report and Order* we retain, clarify, and revise our rules, as follows:

Reconfiguration of C Block License Size: The Commission will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses. By increasing the number of available licenses through this reconfiguration, rather than retaining the larger spectrum blocks (with fewer licenses), taken together with lifting certain of our eligibility requirements, providing set-asides, and providing small and very small business bidding credits to small entities for licenses offered in open bidding, the Commission will promote wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act. Under this alternative, small bidders should be able to fulfill their business needs, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap.

Utilization of a Tiered Approach: The Commission will remove the entrepreneur eligibility restrictions for some, but not all, licenses available in future C and F block auctions. Based on the demand for spectrum to satisfy congestion, new technology and competitive needs, the Commission has considered the alternatives and determined that it would serve the public interest to make some additional spectrum available to all interested bidders, not just entrepreneurs. The

Commission will divide Basic Trading Areas ("BTAs") into two tiers according to population size of the BTA. "Tier 1" would comprise BTAs at and above a 2.5 million population threshold; "Tier 2" would comprise BTAs below that population threshold. The Commission believes that by dividing BTAs into two tiers, according to population, the Commission has greater flexibility to eliminate the entrepreneur eligibility restrictions in some of the largest markets while retaining the restrictions in many mid-sized and smaller markets, where smaller entities have proven more successful.

Eligibility Restrictions Under a Tiered Approach: For markets with available 30 MHz licenses, other than licenses that were available but unsold in Auction No. 22, the Commission will allow open bidding for two of the three newly reconfigured 10 MHz C block licenses in Tier 1 and for one of the three newly reconfigured 10 MHz C block licenses in Tier 2. Specifically, in Tier 1, the Commission will allow open bidding for two 10 MHz blocks, 1900–1905 MHz paired with 1980–1985 MHz and 1905 MHz–1910 MHz paired with 1985–1990 MHz. In Tier 2, the Commission will allow open bidding for one 10 MHz block, 1905 MHz–1910 MHz paired with 1985–1990 MHz. The Commission believes this approach will split the C block spectrum available in Auction No. 35 almost equally, when weighted by population, between open and closed licenses. Moreover, in light of the alternatives, this approach, in conjunction with the other revisions to the entrepreneur eligibility restrictions, will make relatively more spectrum available for open bidding in the most populous markets where the demand for spectrum by the large Commercial Mobile Radio Service ("CMRS") carriers is the greatest and the prospects of a spectrum shortage for these carriers is the most acute. For available 15 MHz C block licenses, other than licenses that were available but unsold in Auction No. 22, the Commission will eliminate entrepreneur eligibility restrictions in Tier 1 but retain the restrictions in Tier 2. The Commission believes that in this way we give effect to as many of the section 309(j) objectives as possible. Balancing all of our statutory objectives and considering alternative possibilities, we believe that it is fair and appropriate to apportion the spectrum to accommodate the interests of many carriers that need additional spectrum to "fill out" their service areas or to satisfy capacity needs. Apportioning the 30 MHz C block licenses in the manner described will enable larger carriers to obtain spectrum crucial to their business plans. At the same time, maintaining a significant set aside of C block spectrum for entrepreneurs will help smaller businesses in this band continue to achieve their business goals as well as providing meaningful opportunities for new entrepreneurial firms to enter the market.

In addition, the Commission will allow open bidding for all F block licenses available in Auction No. 35 and in all future auctions. The Commission believes that it is in the public interest and consistent with section 309(j), to remove the set-aside for all available F block licenses. The F block has evolved in a fashion largely distinct from that of the C block; thus, the two blocks have been subject to increasingly different regulatory requirements, reflecting the separate equity and reliance concerns applicable to each of the blocks. Therefore, there is no longer a rationale for attempting to treat the two blocks in an identical or a substantially similar fashion.

Lastly, the Commission will establish open bidding for all broadband PCS C and F block licenses available but unsold in Auction No. 35 or in any other future auction and for all C block licenses, 15 MHz or 30 MHz (reconfigured into 10 MHz), that were available but not sold in Auction No. 22. Bidding to date has failed to result in construction of these licenses and service to the public. By lifting the eligibility restrictions for these unsold licenses now, the Commission hopes to prevent additional delays in their utilization.

Entrepreneur Eligibility: The Commission will not apply the natural growth exception, which allows C and F block licensees to retain their entrepreneur eligibility during the five-year holding period, to determinations of entrepreneur eligibility for Auction No. 35. Although the Commission intended to ignore natural growth for purposes of entrepreneur eligibility during the five-year holding period, it did not intend to ignore such growth in determining eligibility to participate in future C and F block auctions. In addition, the Commission does not see a need to modify § 24.720 which states that an entrepreneurs' block applicant must substantiate its gross revenues and total assets with its most recent audited financial statements, or, if the applicant does not otherwise use audited financial statements, a certification by the applicant's chief financial officer or its equivalent. However, the Commission expects applicants to obtain audited financial statements within a reasonable period of time after the close of the applicable calendar or fiscal year and to base its claim to eligibility on those financial statements.

License Grouping for Bids and Competitive Design: The Commission will not license by bulk bidding. As stated in the *FNPRM,* the Commission is concerned that small entities may be hard pressed to obtain the financing necessary to win and pay for licenses and construct systems included in the bulk bid proposal, while many other carriers may be constrained from participating by the CMRS spectrum cap. Some of the parties that commented on ways to aggregate licenses in the auction process, argued against the use of package bidding for Auction No. 35, on the ground that such a design would be complex and impractical. Other commenters support implementation of package bidding as a way to enhance the ability of auction participants to acquire their targeted groups of licenses while reducing their exposure. The Bureau has discretion, under its existing delegated authority and pursuant to public notice and comment, to determine the competitive bidding design most appropriate for the auction.

"Grandfather" Exception: The Commission will not eliminate the "grandfather" exception contained in § 24.709(b)(9)(i). Instead, the Commission will clarify an applicant's eligibility for the "grandfather" exception after it has been involved in a merger, acquisition, or other business combination, as follows. When each of the merging entities is individually eligible for the "grandfather" exception, the exception will extend to the resulting entity. When one or more of the entities is not individually eligible for the "grandfather" exception, the resulting entity will be eligible for the exception only so long as an originally eligible entity retains *de facto* and *de jure* control of the resulting entity. The Commission does not believe that, when entities eligible for the "grandfather" exception combine, the resulting entity should be penalized. This revision to the Commission's rules will provide spectrum opportunities for entrepreneurs while at the same time maintaining a fair implementation of the auctions program.

Bidding Credits: The Commission will maintain the current level of bidding credits for small and very small businesses, and consortia thereof, of 15 percent and 25 percent, respectively, for licenses subject to "open" biding. After considering the alternatives, the Commission believes that bidding credits of 15 and 25 percent will allow effective competition by small

businesses in open C and F block bidding. In our Specialized Mobile Radio (SMR) 900 MHz auction—using bidding credits of 10 percent and 15 percent—75 percent of the winning bidders were small businesses, winning 26 percent of the licenses. Moreover, in Auction No. 11, the auction of D, E, and F block licenses, small and very small business were the high bidders for 141 of the 986 D and E block licenses won in that auction, even though bidding credits are not available for D and E block licenses. The current level of bidding credits for broadband PCS C and F blocks seems to allow significant participation of small and very small entities; therefore, we do not see a need to increase the current level of bidding credits.

For licenses subject to "closed" bidding, the Commission will eliminate all bidding credits. After considering the alternatives, the Commission believes that the continued use of bidding credits in restricted auctions would not necessarily serve its intended purpose. As explained in the Further Notice, some well-capitalized new entities with small gross revenues qualify for bidding credits, while some older companies with small total assets and net revenues but high gross revenues do not. Eliminating bidding credits in a closed auction will remove this anomaly while at the same time continuing to provide small and very small businesses with a meaningful opportunity to compete in Auction No. 35..

Transfer Requirements for Certain Licenses: The Commission will modify its transfer requirements to correspond to the Commission's changes in the eligibility requirements, and to encourage rapid construction of C and F block systems. Specifically, C and F block licenses won pursuant to "open" bidding at Auction No. 35, or any future open auction for such spectrum, will not be subject to a holding rule. For C and F block licenses won pursuant to "closed" bidding, the Commission will permit a licensee to assign or transfer its licenses to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by our rules. This will encourage rapid build-out and service to the public while at the same time providing C and F block licensees with the ability to access capital; thus, resulting in a more efficient use of spectrum. The Commission will continue to evaluate satisfaction of construction requirements on a license-by-license, rather than on a system-wide, basis.

Additionally, a licensee that won a license in Auction No. 5 or 10 will not be subject to a bidding credit unjust enrichment payment upon transfer and assignment of the license to an entity not qualifying as a small business, subject to the Commission's transfer requirements. Because all license winners in those auctions qualified for the available 25 percent bidding credit, there is no purpose in requiring the payment. However, licenses won in other auctions using a bidding credit will be subject to a bidding credit unjust enrichment payment upon transfer or assignment in accordance with the Commission's transfer requirements.

License Cap: The Commission will remove § 24.710, which prohibits an auction applicant from winning more than 98 C and F block licenses, from the Commission's rules. When this rule was established, the license cap was intended to facilitate a fair distribution of licenses within the C and F blocks. The Commission has achieved this objective; moreover, the reconfiguration of the available 30 MHz C block licenses will create additional C block licenses, while the elimination of the eligibility restrictions will increase the chances of C and F block licenses being won by a variety of entities.

Spectrum Cap: The Commission will continue to apply the CMRS spectrum cap to PCS C and F block licenses to be auctioned. In September 1999, the Commission decided that the spectrum cap, with some modification, continued to promote competition, efficient spectrum use, innovation, and a wide dissemination of licenses. The Commission believes that implementation of the C and F block auction and service rule changes will ease the impact of the spectrum cap for Auction No. 35, making the alternative of spectrum cap relief unnecessary with respect to licenses in this auction. Moreover, the Commission will soon begin its year 2000 biennial review of the spectrum cap rules, providing another opportunity for a comprehensive review of related issues.

76. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensures the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. The Commission believes that these revisions to the C and F block auction and service rules as set forth in the *C/F Block Sixth Report and Order* promote these goals while maintaining the fair and efficient execution of the auctions program.

77. *Report to Congress:* The Commission will send a copy of the *C/F Block Sixth Report and Order*, including this FRFA, in report to be sent to Congress pursuant to the SBREFA, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *C/F Block Sixth Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 24

Personal communications services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 24 as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

2. Amend § 24.202 by revising the introductory text to read as follows:

§ 24.202 Service areas.

Broadband PCS service areas are Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) as defined in this section. MTAs and BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39 ("BTA/MTA Map"). Rand McNally organizes the 50 states and the District of Columbia into 47 MTAs and 487 BTAs. The BTA/MTA Map is available for public inspection at the Office of Engineering and Technology's Technical Information Center, 445 12th Street, SW, Washington, DC 20554.

* * * * *

3. Amend § 24.203 by revising paragraph (b) to read as follows:

§ 24.203 Construction requirements.

* * * * *

(b) Licensees of 10 MHz blocks, including 10 MHz C block licenses reconfigured pursuant to Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97–82,

Sixth Report and Order, FCC 00–313, and 15 MHz blocks resulting from the disaggregation option as provided in the Commission's Rules Regarding Installment payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket 97–82, 12 FCC Rcd 16436 (1997), as modified by Order on Reconsideration of the Second Report and Order, WT Docket 97–82, 13 FCC Rcd 8345 (1998), must serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed. Population is defined as the 1990 population census. Licensees may elect to use the 2000 population census to determine the five-year construction requirement. Failure by any licensee to meet these requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

* * * * *

4. Amend § 24.229 by revising paragraph (b) to read as follows:

§ 24.229 Frequencies.

* * * * *

(b) The following frequency blocks are available for assignment on a BTA basis:

Block C: 1895–1910 MHz paired with 1975–1990 MHz;

Pursuant to Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97–82, *Sixth Report and Order*, FCC 00–313, all 30 MHz Block C licenses available for auction in Auction No. 35 or any subsequent auction will be reconfigured into three 10 MHz C block licenses as follows: 1895–1900 MHz paired with 1975–1980 MHz, 1900–1905 MHz paired with 1980–1985 MHz, 1905–1910 MHz paired with 1985–1990 MHz;

Block D: 1865–1870 MHz paired with 1945–1950 MHz;

Block E: 1885–1890 MHz paired with 1965–1970 MHz;

Block F: 1890–1895 MHz paired with 1970–1975 MHz;

5. Amend § 24.709 by revising paragraphs (a), (a)(1), (a)(3), (b)(9)(i), redesignating paragraph (b)(9)(ii) as paragraph (b)(9)(iv), adding new paragraphs (b)(9)(ii), (b)(9)(iii), revising paragraph (d)(1), redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e) and (f) to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

(a) *General Rule for licenses offered for closed bidding.* (1) No application is acceptable for filing and no license shall be granted to a winning bidder in closed bidding for frequency block C or frequency block F, unless the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, have had gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

* * * * *

(3) Any licensee awarded a license won in closed bidding pursuant to the eligibility requirements of this section (or pursuant to § 24.839(a)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments (i.e., from sources whose gross revenues and total assets are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development, or expanded service shall not be considered.

(b) * * *

(9) * * *

(i) In addition to entities qualifying for closed bidding under paragraph (a)(1) of this section, any entity that was eligible for and participated in the auction for frequency block C, which began on December 18, 1995, or the reauction for frequency block C, which began on July 3, 1996, will be eligible to bid for C block licenses offered in closed bidding in any reauction of frequency block C spectrum that begins within two years of March 23, 1999.

(ii) In cases of merger, acquisition, or other business combination of entities, where each of the entities is eligible to bid for C block licenses offered in closed bidding in any reauction of C block spectrum on the basis of the eligibility exception set forth in paragraph (b)(9)(i) of this section, the resulting entity will also be eligible for the exception specified in paragraph (b)(9)(i).

(iii) In cases of merger, acquisition, or other business combination of entities, where one or more of the entities are ineligible for the exception set forth in paragraph (b)(9)(i) of this section, the resulting entity will not be eligible pursuant to paragraph (b)(9)(i) unless an eligible entity possesses *de jure* and *de facto* control over the resulting entity.

* * * * *

(d) * * * (1) Applicants and licensees claiming eligibility for closed bidding under this section or for other provisions under §§ 24.711 through 24.720 shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

* * * * *

(e) *Tiers.* (1) For purposes of determining spectrum to which the eligibility requirements of this section are applicable, the BTA service areas (see § 24.202(b)) are divided into two tiers according to their population as follows:

(i) Tier 1: BTA service areas with population equal to or greater than 2.5 million;

(ii) Tier 2: BTA service areas with population less than 2.5 million.

(2) For Auction No. 35, the population of individual BTA service areas will be based on the 1990 census. For auctions beginning after the start of Auction No. 35, the population of individual BTA service areas will be based on the most recent available decennial census.

(f) *Application of eligibility requirements.* (1) The following categories of licenses will be subject to closed bidding pursuant to the eligibility requirements of this section in auctions that begin after the effective date of this paragraph.

(i) For Tier 1 BTAs, one of the 10 MHz C block licenses (1895–1900 MHz paired with 1975–1980 MHz);

(ii) For Tier 2 BTAs, two of the 10 MHz C block licenses (1895–1900 MHz paired with 1975–1980 MHz; 1900–1905 MHz paired with 1980–1985 MHz) and all 15 MHz C block licenses.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, any C block license for operation on spectrum that has been offered, but not won by a bidder, in closed bidding in any auction beginning on or after March 23, 1999, will not be subject in a subsequent auction to closed bidding pursuant to the eligibility requirements of this section.

* * * * *

§ 24.710 [Removed and Reserved]

6. Remove and reserve § 24.710.

7. Revise § 24.712 to read as follows:

§ 24.712 Bidding credits for licenses for frequency Block C.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or

§ 24.720(b)(4) may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) may use a bidding credit of twenty-five percent as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) *Unjust enrichment.* See § 1.2111 of this chapter. The unjust enrichment provisions of § 1.2111(d) and (e)(2) shall not apply with respect to licenses acquired in either the auction for frequency block C that began on December 18, 1995, or the reauction of block C spectrum that began on July 3, 1996.

8. Amend § 24.714 by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 24.714 Partitioned licenses and disaggregated spectrum.

(a) * * *

(2) Broadband PCS licensees in spectrum blocks A, B, D, and E and broadband PCS C and F block licenses not subject to the eligibility requirements of § 24.709 may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(3) Broadband PCS licensees that acquired C or F block licenses in closed bidding subject to the eligibility requirements of § 24.709 may partition their licensed geographic service area or disaggregate their licensed spectrum at any time to an entity that meets the eligibility criteria set forth in § 24.709 at the time the request for partial assignment of license is filed or to an entity that holds license(s) for frequency blocks C and F that met the eligibility criteria set forth in § 24.709 at the time of receipt of such license(s). Partial assignment applications seeking partitioning or disaggregation of broadband PCS licenses in spectrum blocks C and F must include an attachment demonstrating compliance with this section.

* * * * *

9. Amend § 24.717 by revising paragraphs (a) and (b) to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(4) may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) may use a bidding credit of twenty-five percent as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

* * * * *

10. Amend § 24.720 by revising paragraph (i) to read as follows.

§ 24.720 Definitions.

* * * * *

(i) *Members of Minority Groups.* Members of minority groups include individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian, and Asian American extraction.

* * * * *

11. Amend § 24.839 by revising paragraphs (a) introductory text, (a)(2), (a)(3) and (a)(5) and by adding paragraph (a)(6) to read as follows:

§ 24.839 Transfer of control or assignment of license.

(a) Restrictions on Assignments and Transfers of Licenses for Frequency Blocks C and F won in closed bidding. No assignment or transfer of control of a license for frequency Block C or frequency Block F won in closed bidding pursuant to the eligibility requirements of § 24.709 will be granted unless:

* * * * *

(2) The proposed assignee or transferee meets the eligibility criteria set forth in § 24.709 of this part at the time the application for assignment or transfer of control is filed, or the proposed assignee or transferee holds other license(s) for frequency blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in § 24.709 of this part; or

(3) The application is for partial assignment of a partitioned service area to a rural telephone company pursuant to § 24.714 of this part and the proposed assignee meets the eligibility criteria set forth in § 24.709 of this part; or

* * * * *

(5) The assignment or transfer of control is pro forma; or

(6) The application for assignment or transfer of control is filed on or after the date the licensee has notified the Commission pursuant to § 24.203(c) that its five-year construction requirement has been satisfied.

* * * * *

[FR Doc. 00–22630 Filed 9–1–00; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1898; MM Docket No. 99–299; RM–9687 & RM–9813]

Radio Broadcasting Services; Osceola, Sedalia & Wheatland, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed by The Clair Group, we will substitute Channel 262A for Channel 222A at Osceola, MO and modify the license for Station KCVJ and substitute Channel 222A for Channel 221A at Sedalia, MO and modify the license for Station KSDL. *See* 64 FR 56723, October 21, 1999. The coordinates for Channel 262A, Osceola, are 38–03–09 and 93–35–16. The coordinates for Channel 222A, Sedalia, are 38–43–52 and 93–13–32. In response to a counterproposal filed by Bott Communications, Inc. we will allot Channel 226A to Wheatland, Missouri, at coordinates 37–55–00 and 93–14–30. There is a site restriction 14.3 kilometeres (8.9 miles) east of the community. A filing window for Channel 226A at Wheatland will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective October 2, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–299, adopted August 9, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription

Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 222A and adding Channel 262A at Osceola, by removing Channel 221A and adding Channel 222A at Sedalia and by adding Wheatland, Channel 226A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–22560 Filed 9–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1897; MM Docket No. 00–93; RM–9881]

Radio Broadcasting Services; Lynn Haven, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 282A to Lynn Haven, Florida, in response to a petition filed by Beacon House Communications. *See* 65 FR 36399, June 8, 2000. The coordinates for Channel 282A at Lynn Haven are 30–11–20 NL and 85–42–20 WL. A filing window for Channel 282A at Lynn Haven will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective October 2, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 00–93, adopted August 8, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Lynn Haven, Channel 282A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–22562 Filed 9–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1902; MM Docket No. 99–239; RM–9658]

Radio Broadcasting Services; Johannesburg and Edwards, California.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Adelman Communications, Inc., substitutes Channel 280A for Channel 280B1 at Johannesburg, California, and reallots Channel 280A to Edwards, California, as the community's first local aural service. *See* 64 FR 36322 (July 6, 1999). Channel 280A can be allotted at Edwards in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioner's requested site 9.2 kilometers (5.7 miles) at coordinates 34–59–40 and 117–59–32. Comments filed by Regent Communications, Inc., High Desert Broadcasting Co., and Amaturo Group of LA., Ltd., are dismissed.

DATES: Effective October 2, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–239, adopted August 9, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 280B1 at Johannesburg and adding Edwards, Channel 280A.

Federal Comunications Commission.

John A. Karousos,

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

[FR Doc. 00–22563 Filed 9–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 00–38; MM Docket No. 92–195, RM–7091, RM–7146, RM–8123, RM–8124]

Radio Broadcasting Services; Beverly Hills, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a Petition for Reconsideration filed by Dickerson Broadcasting, Inc., directed to the *Memorandum and Order* in this proceeding which upheld an earlier

action upgrading Station WXOF, Beverly Hills, Florida, to specify operation on Channel 292C3. *See* 61 FR 19558, May 2, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* adopted February 7, 2000, and released February 14, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 00–22613 Filed 9–1–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1896; MM Docket No. 98–85; RM–9286, RM–9359]

Radio Broadcasting Services; Meeteetse and Cody, WY.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Windy Valley Broadcasting, allots Channel 273C to Meeteetse, Wyoming, as the community's first local aural service, and, at the request of L. Topaz Enterprises, Inc., allots Channel 244C3 to Cody, Wyoming, as the community's fourth local aural service. *See* 63 FR 34621 (June 25, 1998). Channel 273C can be allotted at Meeteetse in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without a site restriction at coordinates 44–09–24 and 108–52–24. Channel 244C3 can be allotted at Cody at coordinates 44–31–36 and 109–03–18 in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments without a site restriction. Filing windows for Channels 273C at Meeteetse and 244C3 at Cody will not be opened at this time. Instead, the issue of opening a filing window for each channel will be addressed by the Commission in a subsequent *Order*.

DATES: Effective October 2, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–85, adopted August 9, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Meeteetse, Channel 273C and Channel 244C3 at Cody.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–22615 Filed 9–1–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1900; MM Docket No. 00–95; RM–9887]

Radio Broadcasting Services; Live Oak, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 259A to Live Oak, Florida, in response to a petition filed by SSR Communications Incorporated. *See* 65 FR 37753, June 16, 2000. The coordinates for Channel 259A at Live Oak are 30–13–12 NL and 82–54–00 WL. A filing window for Channel 259A at Live Oak will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective October 2, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 00–95, adopted August 9, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 259A at Live Oak. Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–22616 Filed 9–1–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1904; MM Docket No. 98–59; RM–9859, RM–9886]

Radio Broadcasting Services; Casper, Lusk, and Sinclair, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Citicasters Co., allots Channel 228C1 at Casper, Wyoming, as the community's eighth local commercial FM transmission service (RM–9859). See 63 FR 24517, May 4, 1998. At the request of Mountain States Radio, Inc., we also allot Channel 242C at Lusk, and Channel 262C at Sinclair as each community's first local aural transmission service (RM–9886). Channel 228C1 can be allotted to Casper in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.9 kilometers (2.2 miles) southeast to avoid a short-spacing to the allotment reference site for Channel 228A at Moorcoft, Wyoming. The coordinates for Channel 228C1 at Casper are 42–47–45 North Latitude and 106–22–53 West Longitude. Additionally, Channel 242C can be allotted to Lusk in compliance with the Commission's minimum distance separation requirements at city reference coordinates; and Channel 262C can be allotted to Sinclair with a site restriction of 8 kilometers (5 miles) north at petitioner's requested site. The coordinates for Channel 242C at Lusk are 42–45–42 North Latitude and 104–27–06 West Longitude; and the coordinates for Channel 262C at Sinclair are 41–51–01 North Latitude and 107–06–48 West Longitude.

DATES: Effective October 2, 2000. A filing window for Channel 228C1 at Casper, Wyoming, Channel 242C at Lusk, Wyoming, and Channel 262C at Sinclair, Wyoming, will not be opened at this time. Instead, the issue of opening filing windows for these channels will be addressed by the Commission in a subsequent order.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–59, adopted August 8, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming is amended by adding Channel 228C1 at Casper; Lusk, Channel 242C; and Sinclair, Channel 262C.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–22617 Filed 9–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[FCC 00–264; WT Docket No. 96–86]

Public Safety 700 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Second Memorandum Opinion and Order*, (*Second MO&O*), addresses petitions for reconsideration that were filed in response to the *First Report and Order*, (*First R&O*) in this proceeding. The Commission resolves those portions of the petitions that address our decisions on certain technical requirements, the digital modulation requirement, protection criteria between television and land mobile operations, eligibility for licensing and alliances under our Rules, and administrative issues regarding regional planning, national planning and frequency coordination.

DATES: Effective November 6, 2000, except for § 90.176, which contains information collection requirements that have not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., TW–325, Washington, DC 20554. A copy of each filing should be sent to International Transcription Service, Inc. (ITC), 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, and Pam Slipakoff, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, SW., Room 4–C421, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Pam Slipakoff or Peter J. Daronco of the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680. For further information concerning the information collection contained in the *Second MO&O*, contact Judy Boley at (202) 418–0215 or via the Internet to jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second MO&O* in WT Docket No. 96–86, FCC 00–264, adopted July 21, 2000, and released August 1, 2000. The full text of the (Second MO&O) is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The full text of the *Second MO&O* may also be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW., Washington, DC 20036, telephone (202) 857–3800, facsimile (202) 857–3805. The full text of the *Second MO&O* may also be downloaded at: <http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00264.doc>. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

Synopsis of the Second Memorandum Opinion and Order

1. The *First Report and Order*, (*First R&O*), 63 FR 58645 November 2, 1998, in this proceeding established a band plan and set forth service rules for 24 MHz of spectrum (the 700 MHz band) that was recently designated for public safety use in light of the transition to digital television. In response, seventeen parties filed petitions for reconsideration and/or clarification of those decisions. On February 25, 2000, the Public Safety National Coordination Committee (NCC) submitted recommendations to the Commission for technical and operational standards on the new 700 MHz band. The *Second MO&O* addresses those petitions for reconsideration that were filed in response to the *First R&O*. It does not, however, establish a digital modulation standard, because the Commission is currently seeking public comment on the issue in a *Fourth Notice of Proposed Rule Making* in this proceeding. The

Second MO&O does, in turn, establish that some form of digital modulation is mandatory for the 700 MHz band, while interim analog modulation is not permissible.) *The Second MO&O* also defers resolution of the various portions of the reconsideration requests that address the band plan for the 700 MHz band, and low power narrowband devices for on-scene communications.

2. The *Second MO&O* reaffirms most of the decisions on technical standards that were established by the *First R&O*. The Commission declines to modify its Rules regarding transmitter power and antenna height limitations, noting that the Commission's existing waiver process is an efficient and effective mechanism to address those situations when individual technical requirements may warrant an exemption from the Rules. The Commission grants certain petitions for reconsideration regarding automatic power control, however, by making it an optional requirement for mobile and portable transmitters. With regard to emission limitations, the Commission defers establishing any particular value, while charging the industry to provide consensus recommendations within a one-year time frame. However, in response to various petitions for reconsideration, the Commission modifies its frequency stability requirement for narrowband mobile and portable units by adopting flexible standards that account for varying operating channel bandwidths: 1.0 ppm for 6.25 kHz, 1.5 ppm for 12.5 kHz (2 channel aggregate), and 2.5 ppm for 25 kHz (4 channel aggregate). The Commission retains its nationwide wideband channel efficiency standard as adopted in its *First R&O*, while noting that it may revisit the issue pursuant to further NCC recommendations. Similarly, the Commission refuses to establish any receiver standards until such time as the NCC issues recommendations on the matter.

3. In addition to these technical standards, the *Second MO&O* also resolves certain petitions regarding interference between broadcast television and land mobile operations. The Commission retains its current protection criteria, while noting that public safety applicants can submit an engineering study to justify separations that differ from those specified in the Commission's Rules.

4. The *Second MO&O* resolves several concerns regarding the eligibility to hold a license in the 700 MHz band. The Commission clarifies that every non-governmental organization (NGO) must be authorized by a state or local governmental entity engaged in public safety. In addition, NGOs must submit a written statement of continuing authorization by their governmental sponsor at renewal time. The *Second MO&O* also clarifies that § 2.103(b) of our Rules, provides a new sharing option for the 700 MHz band under which the Commission authorizes its state or local governmental licensee to allow a Federal public safety entity to use the licensed channels pursuant to the terms of a written "Section 2.103(b) agreement" between the licensee and the Federal entity. In that regard, the *Second MO&O* clarifies related concerns of requiring NTIA approval, respecting contractual terms, implementing coordinated use, and limiting applicability to the general use spectrum.

5. There are several administration issues that the *Second MO&O* addresses, in the areas of regional planning, national planning, frequency coordination and common data bases. The Commission retains its regional planning approach, while clarifying that regional planning committees (RPCs) are authorized to provide the "highest and best" uses of the 700 MHz band general use spectrum (limited by a requirement that they ensure representation of all public safety entities in their regions). The Commission also declines to establish RPC funding through frequency coordinators, and declines to require all RPCs to conform to state boundaries, given that entities may opt out of a designated regional planning process. With regard to national planning, the *Second MO&O* clarifies certain issues regarding the NCC's participation in resolving inter-regional disputes on the general use channels, the NCC's relationship to RPCs, and the composition and responsibilities of the NCC's membership. Finally, with regard to frequency coordination and common data bases, the Commission affirms its decisions in the *First R&O*, refusing to establish either a common data base of regional plans, or a common coordinator data base. The Commission does, however, encourage RPCs and coordinators to voluntarily create databases that are responsive to their ongoing requirements.

Regulatory Flexibility Act Final Analysis

6. As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in Appendix A of the *Second Notice of Proposed Rulemaking* issued in this proceeding. No comments were filed in direct response to the IRFA. Subsequently, a Final Regulatory Flexibility Analysis ("FRFA") was incorporated in Appendix A of the *First R&O* issued in this proceeding. Lastly, a Supplemental Final Regulatory Flexibility Analysis ("First SFRFA") was incorporated in Appendix A of the *Memorandum Opinion and Order on Reconsideration* (*"First MO&O"*), 64 FR 60123, November 4, 1999, issued in this proceeding. The Second Supplemental Final Regulatory Flexibility Analysis ("Second SFRFA") in this *Second Memorandum Opinion and Order* (*"Second MO&O"*) contains information additional to that contained in the First FRFA and is limited to matters raised on reconsideration or clarification with regard to the *First Report and Order* (*First R&O*) and addressed in this *Second MO&O*. This Second SFRFA conforms to the RFA.

I. Need for, and Objectives of, the *Second MO&O*

7. In this *Second MO&O*, we address the multiple Petitions for Reconsideration and/or Clarification filed in connection with the *First Report and Order* in this docket that established a band plan and adopted service rules in the newly-reallocated public safety spectrum at 764–776 MHz and 794–806 MHz ("the 700 MHz band"). This *Second MO&O* resolves those portions of the petitions that address our decisions in the *First R&O* on:

- Digital modulation requirement for public safety 700 MHz radios;
- Certain technical requirements—namely, transmitter power and antenna height, automatic power control, emission limits, frequency stability, wideband channel efficiency standards, and receiver standards;
- Protection criteria established between television and land mobile operations;
- Eligibility for licensing and alliances under § 2.103(b) of our Rules, and
- Administrative issues regarding regional planning, national planning, and frequency coordination.

II. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

8. No comments were filed in direct response to either of the IRFAs, or either of the final analyses. However, as described in Section V, we have taken into account all comments submitted generally by small entities.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

9. 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. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration ("SBA"). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities.

10. *Public Safety Radio Pool Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Spectrum in the 700 MHz band for public safety services is governed by 47 U.S.C. 337. Non-Federal governmental entities as well as private businesses are licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity. The rule changes adopted in this *Second MO&O* could affect public safety entities who wished to utilize frequencies in the low power pool for uses such as on-scene firefighting communications and various other short-range communications systems which would be developed for 700 MHz band equipment.

11. *Radio and Television Equipment Manufacturers.* According to SBA regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment. We anticipate that no more than six radio equipment manufacturers will be affected by our decisions in this proceeding. Of these six firms, no more than four have fewer than 750 employees and would therefore be classified as small entities.

12. *Television Stations.* This proceeding will affect full service TV station licensees (Channels 60–69), TV translator facilities, and low power TV (LPTV) stations. The SBA defines a TV broadcasting station that has no more than $10.5 million in annual receipts as a small business. TV broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by TV to the public, except cable and other pay TV services. Included in this industry are commercial, religious, educational, and other TV stations. Also included are establishments primarily engaged in TV broadcasting and which produce taped TV program materials. Separate establishments primarily engaged in producing taped TV program materials are classified under another SIC number.

13. There were 1,509 TV stations operating in the Nation in 1992. That number has remained fairly constant as indicated by the approximately 1,551 operating TV broadcasting stations in the Nation as of February 28, 1997. For 1992 the number of TV stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments. There are currently 95 full service analog TV stations, either operating or with approved construction permits on channels 60–69. In the *DTV Proceeding,* we adopted a DTV Table which provides only 15 allotments for DTV stations on channels 60–69 in the continental United States. There are seven DTV allotments in channels 60–69 outside the continental United States. Thus, the rules will affect approximately 117 TV stations; approximately 90 of those stations may be considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-TV affiliated companies. We recognize that the rules may also impact minority-owned and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0 percent) of 1,221 commercial TV stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial TV stations in the United States.

14. There are currently 4,977 TV translator stations and 1,952 LPTV stations. Approximately 1,309 low power TV and TV translator stations are on channels 60–69 which could be affected by policies in this proceeding. The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of TV stations are designated under this analysis as potentially small businesses. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. This *Second MO&O* adopts rules that will entail reporting, recordkeeping, and/or third-party consultation. However, the Commission believes that these requirements are the minimum needed. The *Second MO&O* extends the scope of non-governmental organization ("NGO") certification so that all applications submitted by NGOs must be accompanied by a new, written certification of support (for the NGO applicant to operate the applied-for system) by their supporting state or local governmental entity. This change will ensure compliance with the statutory criteria for NGO eligibility to hold a license for 700 MHz band public safety spectrum.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the

clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

17. *Automatic Power Control.* In the *First Report and Order,* we required mobile and portable transmitters to be designed to employ automatic power control ("APC"). However, we subsequently realized that APC is incompatible with most public safety dispatch systems. Therefore, we are eliminating our requirement for APC, and are making it optional. To the extent that upgrading equipment for APC may have otherwise imposed a burden, this change benefits small entities and their ability to interact with public safety dispatch systems.

18. *Non-Governmental Organizations.* As noted in Section IV, above, we are adding a requirement for NGOs to recertify their continuing authorization through their supporting governmental entity, for both renewal and modification of NGO licenses. This helps to ensure compliance with the statutory public safety responsibilities for NGOs. Although this recertification will impose an additional burden on small entities, we note that license renewal only occurs once every ten years. Furthermore, we note that NGOs are required, by our Rules, to keep their supporting governmental entity apprised of changes at all times. Therefore, after weighing the additional requirement of recertification against the benefit of ensuring compliance, we decided to add this requirement. We did not, however, complicate the authorization with any additional certification requirements. We are allowing NGO applicants to submit existing written authorizations from their supporting governmental entities, rather than requiring the NGOs to prepare additional documentation.

19. By adding this basic requirement, we also benefit other small entities: the small local governments who may lack sufficient administrative reporting and recordkeeping resources to monitor their NGOs. These small governmental entities may find it easier to keep track of small NGOs as a result of this new recertification procedure.

Report to Congress

20. The Commission will send a copy of this *Second MO&O,* including this Second Supplemental Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to SBREFA, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second MO&O,* including this Second Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second MO&O* and the Second Supplemental Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register.** *See* 5 U.S.C. 604(b).

VI. Paperwork Reduction Analysis

21. This *Second MO&O* contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection contained in this *Second MO&O,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Second MO&O; OMB notification of action is due 60 days from date of publication of this *Second MO&O* in the **Federal Register.**

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. These comments should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or via the Internet to <jboley@fcc.gov>. Furthermore, a copy of any such comments should be submitted to Edward C. Springer, OMB Desk Officer, 725 17th Street, NW, Room 10236 NEOB, Washington, DC 20503, or via the Internet to <edward_c._springer@omb.eop.gov>.

OMB Approval Number: 3060–0783.

Title: Section 90.176 Coordination notification requirements on frequencies below 512 MHz or at 764–776/974–806 MHz

Form No: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 15.

Estimated Time Per Response: .5 hours.

Total Annual Burden: 1959 hours.

Total Annual Cost: 0.

Needs and Uses: The revision to the reporting requirement in 90.176 is a result of decisions in the *Second MO&O* in PR Dkt. No. 96–86 that adds the frequency bands 764–776/794–806 MHz. The rule requires each Private Land Mobile frequency coordinator provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool, and, if requested, an engineering analyses. This requirement is necessary to avoid situations where harmful interference is created because two or more coordinators recommend the same frequency in the same area at approximately the same time to different applicants.

VII. Ordering Clauses

22. Pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 405, and § 1.429(i) of the Commission's Rules, that the petitions for reconsideration and/or clarification filed by the American Association of State Highway and Transportation Officials, Forestry Conservation Communications Association, International Association of Fire Chiefs, Inc., International Association of Fish and Wildlife Agencies, International Municipal Signal Association, and National Association of State Foresters (joint filing), Association of Public-Safety Communications Officials-International, Inc., Dataradio Group of Companies, Ericsson, Inc., Federal Law Enforcement Wireless Users Group, King Communications U.S.A. Inc., Motorola, Inc., National Public Safety Telecommunications Council, New York State Technology Enterprise Corporation, Commonwealth of Pennsylvania, John Powell, Project 25 Steering Committee, Safety Tech Industries, State of California, and State of Florida between November 12, 1998 and December 2, 1998, respectively, *are granted or deferred* to the extent indicated herein and otherwise *are denied.* Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and §§ 1.49 and 1.429 of the Commission's Rules, that Motorola's Motion for Leave to Extend Page Limit *is granted* and Maxon America, Inc. Reply Comment *is denied* to the extent indicated herein.

23. Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), the Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Second Memorandum Opinion and Order,*

including the Second Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), 332(c)(7) and of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.175 is amended by revising paragraphs (e) and (i)(10) through (i)(12) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(e) *For frequencies between 470 and 512 MHz, 764–776/794–806 MHz, 806–824/851–869 MHz, and 896–901/935–940 MHz:* A recommendation of the specific frequencies that are available for assignment in accordance with the loading standards and mileage separations applicable to the specific radio service, frequency pool, or category of user involved is required from an applicable frequency coordinator.

* * * * *

(i) * * *

(10) Applications for mobile stations operating in the 470–512 MHz band, 764–776/794–806 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis in the proposed area of operation.

(11) Applications for add-on base stations in multiple licensed systems operating in the 470–512 MHz, 764–776/794–806 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis.

(12) Applications for control stations operating below 470 MHz, 764–776/794–806 MHz, or above 800 MHz and meeting the requirements of § 90.119(b).

* * * * *

3. Section 90.176 is revised to read as follows:

§ 90.176 Coordinator notification requirements on frequencies below 512 MHz or at 764–776/794–806 MHz.

(a) *Frequencies below 470 MHz.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (f) of this section to all other frequency coordinators who are also certified to coordinate that frequency.

(1) The applicable frequency coordinator for each frequency is specified in the coordinator column of the frequency tables of §§ 90.20(c)(3) and 90.35(b)(3).

(2) For frequencies that do not specify any frequency coordinator, all certified in-pool coordinators must be notified.

(3) For frequencies that are shared between the Public Safety Pool and the Industrial/Business Pool (frequencies subject to §§ 90.20(d)(7), (d)(25), (d)(34), or (d)(46) in the Public Safety Pool, and subject to §§ 90.35(c)(13), (c)(25), or (d)(4) in the Industrial/Business Pool), all certified coordinators of both pools must be notified.

(b) *Frequencies in the 470–512 MHz band.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (f) of this section to all other certified frequency coordinators in the Public Safety Pool and the Industrial/Business Pool.

(c) *Frequencies in the 764–776/794–806 MHz band.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (f) of this section to all other certified frequency coordinators in the Public Safety Pool.

(d) Each frequency coordinator must also notify all other certified in-pool coordinators on any day that the frequency coordinator does not make any frequency recommendations.

(e) Notification must be made to all coordinators at approximately the same time and can be made using any method that ensures compliance with the one business day requirement.

(f) At a minimum the following information must be included in each notification:

(1) Name of applicant;

(2) Frequency or frequencies recommended;

(3) Antenna locations and heights;

(4) Effective radiated power (ERP);

(5) Type(s) of emissions;

(6) Description of the service area; and

(7) Date and time of recommendation.

(g) Upon request, each coordinator must provide any additional information requested from another certified coordinator regarding a pending recommendation that it has processed but has not yet been granted by the Commission.

(h) It is the responsibility of each coordinator to insure that its frequency recommendations do not conflict with the frequency recommendations of any other frequency coordinator. Should a conflict arise, the affected coordinators are jointly responsible for taking action to resolve the conflict, up to and including notifying the Commission that an application may have to be returned.

4. Section 90.523 is amended by revising paragraph (b) to read as follows:

§ 90.523 Eligibility.

* * * * *

(b) *Nongovernmental organizations.* A nongovernmental organization (NGO) that provides services, the sole or principal purpose of which is to protect the safety of life, health, or property, is eligible to hold an authorization for a system operating in the 764–776 MHz and 794–806 MHz frequency bands for transmission or reception of communications essential to providing such services if (and only for so long as) the NGO applicant/licensee:

(1) Has the ongoing support (to operate such system) of a state or local governmental entity whose mission is the oversight of or provision of services, the sole or principal purpose of which is to protect the safety of life, health, or property;

(2) Operates such authorized system solely for transmission of communication essential to providing services the sole or principal purpose of which is to protect the safety of life, health, or property; and

(3) All applications submitted by NGOs must be accompanied by a new, written certification of support (for the NGO applicant to operate the applied-for system) by the state or local governmental entity referenced in paragraph (b)(1) of this section.

* * * * *

5. Section 90.535 is amended by revising paragraphs (b) and (c) to read as follows:

§ 90.535 Modulation and spectrum usage efficiency requirements.

* * * * *

(b) Transmitters designed to operate in the narrowband segment using digital modulation must be capable of maintaining a minimum data rate of 4.8 kbps per 6.25 kHz of bandwidth.

(c) Transmitters designed to operate in the wideband segment using digital modulation must be capable of maintaining a minimum data rate of 384 kbps per 150 kHz of bandwidth.

6. Section 90.539 is amended by revising paragraph (c) to read as follows:

§ 90.539 Frequency stability.

* * * * *

(c) The frequency stability of mobile, portable, and control transmitters operating in the narrowband segment must be 400 parts per billion or better when AFC is locked to the base station. When AFC is not locked to the base station, the frequency stability must be at least 1.0 ppm for 6.25 kHz, 1.5 ppm for 12.5 kHz (2 channel aggregate), and 2.5 ppm for 25 kHz (4 channel aggregate).

* * * * *

§ 90.541 [Amended]

7. Section 90.541 is amended by removing paragraph (d).

8. Section 90.545 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 90.545 TV/DTV interference protection criteria.

* * * * *

(c) * * *

(2) * * *

(ii) Control and mobile stations (including portables) are limited in height and power and therefore shall afford protection to co-channel and adjacent channel TV/DTV stations in accordance with the values specified in Table D (co-channel frequencies based on 40 dB protection) in § 90.309 of this part and a minimum distance of 8 kilometers (5 miles) from all adjacent channel TV/DTV station hypothetical or equivalent Grade B contours (adjacent channel frequencies based on 0 dB protection for TV stations and—23 dB for DTV stations). Since control and mobile stations may affect different TV/DTV stations than the associated base station, particular care must be taken by applicants to ensure that all the appropriate TV/DTV stations are considered (*e.g.*, a base station may be operating on TV Channel 64 and the mobiles on TV Channel 69, in which case TV Channels 63, 64, 65, 68, and 69 must be protected). Since mobiles and portables are able to move and communicate with each other, licensees or coordinators must determine the areas where the mobiles can and cannot roam in order to protect the TV/DTV stations, and advise the mobile operators of these areas and their restrictions.

* * * * *

[FR Doc. 00–22469 Filed 9–1–00; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[I.D. 062600B]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Rebuilding Overfished Species

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

ACTION: Approval of overfished species rebuilding plans.

SUMMARY: NMFS announces approval of rebuilding plans for three overfished species managed under the Pacific coast groundfish fishery management plan (FMP); bocaccio, lingcod, and Pacific ocean perch (POP). These three species were designated as overfished under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) on March 3, 1999. Initial rebuilding measures for these species were implemented through the 2000 annual specifications and management measures for Pacific coast groundfish). The purpose of this action is to provide a public announcement of formal approval of these three overfished species rebuilding plans.

DATES: Effective September 5, 2000 until the effective date of the 2001 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through October 5, 2000.

ADDRESSES: Written comments should be sent to William Stelle, Jr., Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, or faxed to 206-526-6736; or to Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, or faxed to 562-980-4047. Comments will not be accepted if submitted via e-mail or Internet. Copies of the rebuilding plans may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201, or by contacting Donald McIsaac at 503-326-6352.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, NMFS, 206-526-6140; fax: 206-526-6736 and e-mail: bill.robinson@noaa.gov or Svein Fougner, Southwest Region, NMFS, 562-980-4000; fax: 562-980-4047 and e-mail: svein.fougner@noaa.gov.

Electronic Access: This **Federal Register** document is also accessible via the Internet at the Office of Federal Register's website at http://www.access.gpo.gov/su-docs/aces/aces140.html.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries off the Washington, Oregon, and California coasts are managed pursuant to the Magnuson-Stevens Act (16 U.S.C. 1801-1833) and the Pacific Coast Groundfish FMP. Regulations implementing the FMP appear at 50 CFR part 660 subpart G.

According to the FMP, a species is overfished if its current biomass is less than 25 percent of the unfished biomass level. The Magnuson-Stevens Act requires that a rebuilding plan be prepared within a year after the Council has been notified that a species is considered overfished. In March 1999, NMFS notified the Council that three species were considered overfished: bocaccio, lingcod, and POP.

NMFS implemented the initial rebuilding measures for the three overfished species in the 2000 annual specifications and management measures for Pacific coast groundfish. Acceptable Biological Catches (ABCs), optimum yields (OYs), and management measures for 2000 are consistent with the FMP and with the first year of rebuilding in the rebuilding plans. None of these rebuilding plans, nor the rebuilding measures, use the multispecies exception at 50 CFR 660.310(d)(6) that authorizes overfishing under limited conditions. The three approved rebuilding plans and 2000 rebuilding measures are summarized as follows:

Bocaccio (*Sebastes paucispinis*)

There are two separate West Coast bocaccio populations, divided at approximately 36° N. lat. The status of the northern bocaccio stock, with a range extending into British Columbia and Alaska, is unknown. It is the southern stock, in waters south of 36° N. lat. (known as the combined Monterey and Conception management areas) that is considered overfished. Rebuilding measures for bocaccio only apply to fisheries south of 36° N. lat.

The southern bocaccio stock has suffered poor recruitment during the warm water conditions that have prevailed off southern California for the past several years. A 1999 southern bocaccio stock assessment estimated that the current spawning output of the

southern bocaccio stock is at 2.1 percent of the estimated spawning output at its unfished level. Bocaccio are a typical long-lived and slow-growing rockfish, and stock rebuilding for bocaccio is heavily dependent on single large year classes. The 1999 year class is thought to be an unusually large cohort that could help improve the future health of the stock.

For the bocaccio rebuilding plan, the Council conservatively assumed a moderate-sized 1999 year class, which sets the time to rebuild in the absence of fishing at 26 years. Under the Magnuson-Stevens Act, the maximum allowable time to rebuild is that minimum no-fishing assumption, plus one mean generation time for that species. In the case of bocaccio, with a mean generation time of 12 years, the maximum rebuilding time would be 38 years (26 + 12). There is a 67 percent probability that the bocaccio stock will rebuild to MSY biomass in 38 years.

For 2000, the Council set the bocaccio ABC at 164 metric tons (mt) and the OY at 100 mt. These very conservative harvest levels do not allow directed bocaccio targeting, but rather acknowledge that some incidental catch will occur. Bocaccio management measures are designed to reduce possible incidental interceptions. Bottom trawl target opportunities for shelf rockfish are dramatically reduced, with no bocaccio landings allowed for vessels using large footrope trawl gear (i.e., gear with rollers larger than 8 inches (20 cm) in diameter), and small footrope bottom trawl gear permitted to land amounts that should accommodate only small, unavoidable bycatch. Midwater trawling for shelf rockfish is encouraged over bottom trawling. Chilipepper, which commonly associates with bocaccio, has an OY reduced almost in half to reduce potential bocaccio bycatch. For both the commercial nontrawl gear fisheries and the recreational fisheries, shelf rockfish harvest has been closed for 2 of the first 4 months of the year south of 40°10' N. lat., and commercial set net limits are reduced to the same level as other open access nontrawl gear limits. Further recreational management measures include reduced bag limits (from 15 to 10 rockfish), and maintaining the 3 bocaccio bag limit but applying a new 10-inch (25.4 cm) size limit for that species. Ironically, the abundant 1999 year class had made bocaccio avoidance particularly difficult, forcing strict curtailment of fishing effort to avoid that year class.

Lingcod (*Ophiodon elongatus*)

West Coast lingcod is a single stock, having a range encompassing the U.S. West Coast, and extending into British Columbia. Rebuilding measures for lingcod apply coastwide. The current spawning potential of the West Coast lingcod stock is estimated to be at 7.5 percent of the average unfished level. Although the stock has declined substantially from historic levels, lingcod appears to be a highly productive species with good potential for rapid population increases, given appropriate decreases in fishing effort.

Lingcod mature at a relatively rapid rate, at age 2+ for males and age 3+ for females. Because of lingcod's rapid maturity and high fecundity, the Council has designed a rebuilding plan that is expected to bring the lingcod stock to its maximum sustainable yield (MSY) level within 10 years. The management measures implementing the rebuilding plan in 2000 set the lingcod ABC at 700 mt and the OY at 378 mt. Under these measures, there is a 60 percent probability that the biomass will rebuild to the MSY level within 10 years.

In 2000, commercial landings of lingcod are prohibited for 6 months of the year (January-April, plus November-December), thus protecting the stock during lingcod spawning and nesting seasons. Lingcod landings limits during the open season are much lower than lingcod limits of prior years, yet have been set to achieve the limited entry and open access allocations. The size limit for lingcod is increased for fixed gear and recreational fisheries south of 40°10' N. lat. A maximum size limit is imposed in the recreational fishery off Oregon, and a new 2-fish per day bag limit is imposed off California. The recreational fishery for lingcod is closed 4 months off Washington, remains open in Oregon and California north of 40°10' N. lat., and is closed 2 of the first 4 months of the year south of 40°10' N. lat. The varying seasons, bag limits and size limits for each state were recommended to best fit the needs of the recreational fisheries of each state, while meeting the conservation requirements. Lingcod are found predominantly on the continental shelf. Gear restrictions that the Council imposed to protect continental shelf rockfish will also benefit lingcod. Lingcod taken onboard while still living appear to have a good chance of survival if returned quickly to sea.

Pacific Ocean Perch (*Sebastes alutus*)

The West Coast POP stock is considered a single population that extends from the northern border of Washington State south into California. Rebuilding measures for POP apply north of 43° N. lat. (known as the combined Vancouver and Columbia management areas.)

POP off the West Coast was overfished by foreign vessels before the implementation of the FMP. State and Federal rebuilding efforts have been in place since the early 1980's, but those rebuilding efforts were not as rigorous as currently required by the Magnuson-Stevens Act. A 1998 stock assessment estimated the POP biomass to be at 13 percent of its unfished level. Recruitment has been at a steady low for several years, with no large year classes appearing for the past two decades. Although the historical rebuilding program has accomplished little rebuilding, it has probably prevented further declines in abundance, given the lack of the large year classes needed to boost the stock. Like bocaccio, POP are a slow-growing and long-lived rockfish with relatively low fecundity.

POP have been slow to rebuild and are expected to continue to rebuild slowly. If all fishing on POP were eliminated, POP could be expected to rebuild in approximately 18 years. The maximum allowable rebuilding time for POP is 18 years plus one mean generation length (29 years for POP) for a total of 47 years. For 2000, rebuilding harvest levels set the POP ABC at 713 mt and the OY at 270 mt. Under these specifications, there is a 79 percent probability that the biomass will rebuild to the MSY level within 47 years.

POP primarily inhabit waters of the upper continental slope and are found along the edge of the continental shelf. Therefore, POP also will benefit from the trawl gear restrictions adopted to protect continental shelf rockfish species. Relative to 1999 levels, the cumulative trip limit for POP taken in the limited entry fishery is reduced by 87 percent from May - October and 63 percent the other 6 months. POP is not an important species for recreational or nontrawl commercial fisheries; therefore, allocation of harvest reduction between fishing sectors is not an issue.

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

Dated: August 28, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–22547 Filed 9–1–00; 8:45 am]

Billing Code: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000407096-0096-01; I.D. 082300A]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Implementation of Conditional Closures

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

ACTION: Implementation of conditional closures in the Gulf of Maine.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that at least 759 metric tons (mt) of Gulf of Maine (GOM) cod have been landed as of July 31, 2000. Therefore, pursuant to regulations governing the Northeast multispecies fishery, the area identified as the Cashes Ledge Closure Area will be closed from November 1, 2000, through November 30, 2000, and the area identified as Rolling Closure Area VI will be closed from January 1, 2001, through January 31, 2001, to all fishing vessels, and to fishing gear capable of catching Northeast multispecies, except as provided under specific provisions in the regulations. The intent of this action is to protect overfished GOM cod resources.

DATES: Effective November 1, 2000, through January 31, 2001.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, 978-281-9279.

SUPPLEMENTARY INFORMATION: Regulations implementing the conditional Cashes Ledge and GOM Rolling Closure Areas in Framework Adjustment 33 (65 FR 21658, April 24, 2000) became effective on June 1, 2000. To ensure that GOM cod landings remain within the target Total Allowable Catch (TAC) of 1,918 mt established for the 2000 fishing year, Framework 33 provided a mechanism to close the area identified as the Cashes Ledge Closure Area from November 1, 2000, through November 30, 2000, and the area identified as Rolling Closure Area VI from January 1, 2001, through January 31, 2001, if the Regional Administrator determines that at least 50 percent of the average between the F0.1 target TAC and the Fmax target TAC (1.67 million lb (759 mt) for the fishing year beginning May 1, 2000) has been landed as of, or before, July 31, 2000. The regulations at § 648.81(o) require NMFS to publish a notification action in the Federal Register informing the public of the implementation of the conditional closures if GOM cod landings have exceeded those levels.

Based on the best available scientific information, the Regional Administrator has determined that at least 1.67 million lb (759 mt) of GOM cod was landed as of July 31, 2000. Therefore, NMFS is required to implement the Cashes Ledge Closure Area, as described in § 648.81(h)(1), and to implement Rolling Closure Area VI, as described in § 648.81(g)(1)(vi), to better ensure that GOM cod landings remain within the target TAC for the fishing year beginning May 1, 2000. Pursuant to § 648.81(o), the area identified as the Cashes Ledge Closure Area will be closed from November 1, 2000, through November 30, 2000, and the area identified as Rolling Closure Area VI will be closed from January 1, 2001, through January 31, 2001, to all fishing vessels, and to fishing gear capable of catching Northeast multispecies, except as provided under § 648.81(g)(2) and (h)(2).

The coordinates of the closed areas are as follows:

CASHES LEDGE CLOSURE AREA

Point	N. Lat.	W. Long.
CL1	43°07'	69°02'
CL2	42°49.5'	68°46'
CL3	42°46.5'	68°50.5'
CL4	42°43.5'	68°58.5'
CL5	42°42.5'	69°17.5'
CL6	42°49.5'	69°26'
CL1	43°07'	69°02'

ROLLING CLOSURE AREA VI

Point	N. Lat.	W. Long. (1)
GM1	42°00'	(2)
GM2	42°00'	(3)
GM3	42°00'	(4)
GM4	42°00'	70°00'
GM8	42°30'	70°00'
GM9	42°30'	(2)

[1] Or other intersecting line:
[2] Massachusetts shoreline
[3] Cape Cod shoreline on Cape Cod Bay
[4] Cape Cod shoreline on the Atlantic Ocean

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 29, 2000.

Richard W. Surdi,

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

[FR Doc. 00–22665 Filed 9–1–00; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000501119-01119-01; I.D. 080400C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Closure and Inseason Adjustments from Cape Falcon to Humbug Mountain, OR

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

ACTION: Closure and inseason adjustments; request for comments.

SUMMARY: NMFS announces that the recreational selective fishery for marked hatchery coho in the area from Cape Falcon to Humbug Mountain, Oregon, was closed on July 25, 2000, at 2359 hours local time (l.t.). The recreational fishery for all-salmon-except-coho reopened on July 26, 2000. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that the recreational quota of 20,000 coho salmon had been reached. These actions are necessary to conform to the 2000 management measures and are intended to ensure conservation of coho salmon.

DATES: Closure effective 2359 hours l.t., July 25, 2000. Reopening effective 0001 hours l.t., July 26, 2000. Comments will be accepted through September 20, 2000.

ADDRESSES: Comments on this action must be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115-0070; or faxed to 206-526-6376; or Rebecca Lent, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4132; or faxed to 562-980-4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William Robinson, 206-526-6140, Northwest Region, NMFS, NOAA; or Svein Fougner, 562-980-4030 Southwest Region, NMFS, NOAA.

SUPPLEMENTARY INFORMATION:

Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that, when a quota for any salmon species in any portion of the fishery management area is projected by the Regional Administrator to be reached on or by a certain date, NMFS will, by notification issued under 50 CFR 660.411(a)(2), close the fishery for all salmon species in the portion of the fishery management area to which the quota applies, as of the date the quota is projected to be reached.

In the 2000 management measures for ocean salmon fisheries (65 FR 26138, May 5, 2000), NMFS announced that the recreational selective fishery for marked hatchery coho in the area between Cape Falcon to Humbug Mountain, OR would open on July 1 through earlier of July 31 or the attainment of a 20,000 marked coho quota, and the all-salmon-except-coho season would then reopen the earlier of August 1 or the attainment of the coho quota.

The Regional Administrator consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife. The best available information on July 24, 2000, indicated that the catch and effort data and projections supported closure of the recreational selective fishery for marked hatchery coho in this area at 2359 hours l.t., July 25, 2000. The recreational fishery for all-salmon-except-coho reopened July 26, 2000. The State of Oregon will manage the recreational fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishermen of these actions was given prior to 2359 hours l.t on July 25, 2000, by telephone hotline number 206-526-6667 and 800-662-9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

Because of the need for immediate action to stop the fishery upon achievement of the quota, NMFS has determined that good cause exists for this notification to be issued without affording a prior opportunity for public comment because such notification would be unnecessary, impracticable, and contrary to the public interest. Moreover, because of the immediate need to stop the fishery upon achievement of the quota, the Assistant Administrator for Fisheries, NOAA finds, for good cause, under 5 U.S.C. 553(d)(3), that delaying the effectiveness of this rule for 30 days is impracticable and contrary to public interest. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: August 29, 2000.

Richard W. Surdi,

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

[FR Doc. 00–22664 Filed 9–1–00; 8:45 am]

BILLING CODE: 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 172
Tuesday, September 5, 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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209–AA04

Standards of Ethical Conduct for Employees of the Executive Branch; Definition of Compensation for Purposes of Prohibition on Acceptance of Compensation in Connection With Certain Teaching, Speaking and Writing Activities

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Government Ethics is amending the prohibition on employees' receipt of compensation for outside teaching, speaking, and writing, as set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, to permit acceptance of travel expenses by employees other than covered noncareer employees.

DATES: This interim rule amendment is effective September 5, 2000. Comments are invited and must be received on or before November 6, 2000.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Kay L. Richman. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov. For E-mail messages, the subject line should include the following reference—"Comments on the Interim Rule Standards Amendment to the Compensation Definition for Teaching, Speaking and Writing Activities."

FOR FURTHER INFORMATION CONTACT: Kay L. Richman, Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule, which is being published by the Office of Government Ethics (OGE) after consultation with the Department of Justice and the Office of Personnel Management, amends 5 CFR 2635.807 to conform to the May 30, 1995, decision by the United States Court of Appeals for the District of Columbia Circuit in *Sanjour* v. *Environmental Protection Agency*, 56 F.3d 85 (*en banc*), as clarified in the April 14, 1998, decision on remand by the United States District Court for the District of Columbia, 7 F. Supp.2d 14 (D.D.C. 1998). *Sanjour*, in which OGE was a co-defendant, involved a First Amendment challenge to the regulatory prohibition in 5 CFR 2635.807(a) on employee acceptance of travel expense reimbursements in connection with unofficial teaching, speaking, and writing that "relates to * * * official duties" under 5 CFR 2635.807(a)(2)(i). The District Court initially rejected the plaintiffs' claims, 786 F. Supp. 1033 (D.D.C. 1992), as did the Court of Appeals on its first hearing of the case, 984 F.2d 434 (D.C. Cir. 1993). On May 30, 1995, however, the Court of Appeals, in a 5–4 *en banc* decision on rehearing, sustained the employees' First Amendment challenge and held invalid "the no-expenses regulations." 56 F.3d 85, 88 (D.C. Cir. 1995). The Court of Appeals *en banc* reasoned that, since a regulation of the General Services Administration (GSA), 41 CFR 304–1.3(a), *allows* travel reimbursements from non-Government sources in connection with *official* speech, whereas § 2635.807(a) *prohibits* travel reimbursements in connection with *unofficial* speech, the regulatory scheme posed a risk of censorship and discrimination based on viewpoint. 7 F. Supp.2d at 18 (District Court decision on remand, explaining the Court of Appeals decision); *see* 56 F.3d at 87, 89, 90, 96–97. At the same time, however, the Appeals Court noted that "the balancing of interests relevant to senior executive officials might 'present [ ] a different constitutional question.'" 56 F.3d at 93. The Court, therefore, explicitly reserved judgment on the constitutionality of the regulations as applied to "senior executive employees." *Id.*

On remand, the District Court entered a final order that enjoined enforcement of the bar on nonofficial travel expenses in 5 CFR 2635.807(a) against "employees below the senior executive service level of employment." As the District Court explained, the *en banc* Court of Appeals ruling invalidated the ban on travel expenses in connection with *all* types of teaching, speaking, and writing related to duties under § 2635.807(a)(*2*)(i), not just those related to duties under § 2635.807(a)(2)(i)(E)(*2*). 7 F. Supp.2d at 17–18. The District Court, however, did not enjoin enforcement of the GSA regulation, which allows travel reimbursements from outside sources in connection with official speech. *Id.* at 18. According to the District Court, "[o]nce the prohibition on travel expense reimbursement for unofficial speech * * * is lifted, then there can be no possible constitutional objection to allowing agencies to accept travel reimbursements from outside sources for official travel." *Id.* at 19.

II. The Amendment

As presently codified, 5 CFR 2635.807(a) bars employees from accepting from non-Government sources "compensation" for teaching, speaking, or writing that "relates to * * * official duties." "Compensation" is generally defined as including travel expenses, except when accepted pursuant to certain statutory authorities that relate primarily to official travel activities. 5 CFR 2635.807(a)(2)(iii). In the revised rule, the introductory text of paragraph (a)(2)(iii) and exclusionary paragraphs (A)–(C) thereunder remain unchanged but, in response to *Sanjour*, a new paragraph (a)(2)(iii)(D) excludes from the definition of "compensation" travel expenses incurred in connection with a covered teaching, speaking or writing activity, unless the employee is a covered noncareer employee as defined in 5 CFR 2636.303(a).

This amendment affects only travel expenses. The ban on acceptance of other forms of compensation remains applicable to all employees to the extent the compensation is given for or in connection with teaching, speaking, or writing related to duties.

Under § 2635.807(a) as amended, employees who are *not* "covered noncareer employees" will be able to accept travel expenses incurred in connection with teaching, speaking, or writing activities that are related to duties. "Covered noncareer employees," on the other hand, will remain subject to the travel expenses ban. This approach continues and formalizes the

enforcement advice OGE provided pending amendment of § 2635.807(a). *See* OGE Memorandum of November 25, 1998, to Designated Agency Ethics Officials (DO–98–034), which is available in the Ethics Resource Library section of the OGE Web site, address: http://www.usoge.gov.

As defined in 5 CFR 2636.303(a), as amended at 64 FR 2421–2422 (January 14, 1999), the term "covered noncareer employee" includes certain Presidential appointees, noncareer members of the Senior Executive Service (SES) or other SES-type systems, and Schedule C or comparable appointees, provided such appointees hold positions "above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule." The term excludes special Government employees, Presidential appointees to positions within the uniformed services, and Presidential appointees within the foreign service below the level of Assistant Secretary or Chief of Mission.

Relying on the definition of "covered noncareer employee" as a means of distinguishing those employees to whom the travel expenses ban continues to apply from those employees who are exempt from it makes sense for a variety of reasons. By definition, a covered noncareer employee is a senior employee at or above the Senior Executive Service level of employment. Excluding such employees from the relaxation of the teaching, speaking and writing rule thus comports with the statement by the *en banc* Court of Appeals in *Sanjour* that "the balancing of interests relevant to senior executive officials might 'present[ ] a different constitutional question than the one we decide today' " and the Court's determination, accordingly, to "express no view on whether the challenged regulations may be applied to senior executive employees." 56 F.3d at 93, *citing United States* v. *National Treasury Employees Union,* 513 U.S. 454 (1995). Conversely, exempting employees other than covered noncareer employees from the ban is consistent with the District Court's clarification, in its decision on remand, that the travel expenses ban may not be enforced against "federal employees *below* the senior executive service level of employment." 7 F. Supp.2d at 17, n.1.

Insofar as the District Court enjoined enforcement of the travel expenses ban only against federal employees *below* the senior executive service level of employment, 7 F. Supp.2d at 17, n. 1, OGE, consistent with the court ruling, could have continued the ban against all senior employees, career as well as noncareer. The decision to continue the ban only against senior noncareer employees, by employing the "covered noncareer employee" definition in this way, however, accords with the higher standards to which the Ethics Reform Act, related regulations, and other regulations hold senior officials who are "covered noncareer employees," particularly with regard to their outside activities. *See* 5 U.S.C. appendix, sections 501(a) and 502; 5 CFR 2635.804 and accompanying note; 5 CFR 2635.807(a)(2)(i)(E)(*3*) and example 6; 5 CFR 2636.301–2636.307. As a practical matter, moreover, the definition of covered noncareer employee has been in use for some time and is familiar to agency ethics officials.

Under amended § 2635.807, therefore, insofar as employees other than "senior," *i.e.* "covered noncareer," employees are concerned, the burden, for First Amendment purposes, on unofficial speech that relates to duties under 5 CFR 2635.807(a)(2)(i) will no longer be greater than the burden on official speech under 31 U.S.C. 1353 and GSA's implementing regulation.

As revised, § 2635.807(a)(2)(iii) includes four new examples that illustrate how applicability of the compensation prohibition may depend on such circumstances as—whether the payment covers travel expenses incurred in connection with a teaching, speaking, or writing activity, or constitutes a fee or other form of consideration; whether the travel expenses are incurred by a covered noncareer employee or by another employee; whether the payment concerns travel that is unrelated to the covered teaching, speaking, or writing activity and is, in effect, a fee for services; and whether the payment is made in connection with a teaching, speaking, or writing activity that is officially assigned and for which travel expense payments are authorized under specific statutory authority, such as 31 U.S.C. 1353, 5 U.S.C. 4111 or 7342, or an agency gift acceptance statute.

As amended, § 2635.807(a)(2)(iii) also includes a note intended to alert employees that, independent of § 2635.807, other authorities, such as 18 U.S.C. 209, Salary of Government Officials and Employees Payable Only by United States, in some circumstances may limit or entirely preclude an employee's acceptance of travel expenses.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general requirements of notice of proposed rulemaking, opportunity for public comment and 30-day delayed effective date for this interim rule amendment. These requirements are being waived because it is in the public interest that this regulation take effect as soon as possible in order to clarify when Government employees may accept travel expenses in connection with teaching, speaking and writing activities that are related to official duties. Interested persons are invited to submit written comments on this interim rule amendment, to be received by OGE on or before November 6, 2000. Before adopting this amendatory interim rule as a final rule, OGE will consider all comments received.

Executive Order 12866

In promulgating this interim rule amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Review and Planning. The amendment has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

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

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this amendatory rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

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

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: July 24, 2000.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2635 as follows:

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart H—Outside Activities

2. Section 2635.807 is amended by:

a. Removing the word "or" at the end of paragraph (a)(2)(iii)(B);

b. Removing the period at the end of paragraph (a)(2)(iii)(C) and adding in its place a semicolon followed by the word "or";

c. Adding a new paragraph (a)(2)(iii)(D); and

d. Adding a Note and four Examples following new paragraph (a)(2)(iii)(D).

The additions read as follows:

§ 2635.807 Teaching, speaking and writing.

(a) * * *

(2) * * *

(iii) * * *

(D) In the case of an employee other than a covered noncareer employee as defined in 5 CFR 2636.303(a), travel expenses, consisting of transportation, lodgings or meals, incurred in connection with the teaching, speaking or writing activity.

Note to Paragraph (a)(2)(iii): Independent of § 2635.807(a), other authorities, such as 18 U.S.C. 209, in some circumstances may limit or entirely preclude an employee's acceptance of travel expenses.

Example 1 to paragraph (a)(2)(iii): A GS–15 employee of the Forest Service has developed and marketed, in her private capacity, a speed reading technique for which popular demand is growing. She is invited to speak about the technique by a representative of an organization that will be substantially affected by a regulation on land management which the employee is in the process of drafting for the Forest Service. The representative offers to pay the employee a $200 speaker's fee and to reimburse all her travel expenses. She may accept the travel reimbursements, but not the speaker's fee. The speech is related to her duties under § 2635.807(a)(2)(i)(C) and the fee is prohibited compensation for such speech; travel expenses incurred in connection with the speaking engagement, on the other hand, are not prohibited compensation for a career GS–15 employee.

Example 2 to paragraph (a)(2)(iii): Solely because of her recent appointment to a Cabinet-level position, a Government official is invited by the Chief Executive Officer of a major international corporation to attend firm meetings to be held in Aspen for the purpose of addressing senior corporate managers on the importance of recreational activities to a balanced lifestyle. The firm offers to reimburse the official's travel expenses. The official may not accept the offer. The speaking activity is related to duties under § 2635.807(a)(2)(i)(B) and, because she is a covered noncareer employee as defined in § 2636.303(a) of this chapter, the travel expenses are prohibited compensation as to her.

Example 3 to paragraph (a)(2)(iii): A GS–14 attorney at the Federal Trade Commission (FTC) who played a lead role in a recently concluded merger case is invited to speak about the case, in his private capacity, at a conference in New York. The attorney has no public speaking responsibilities on behalf of the FTC apart from the judicial and administrative proceedings to which he is assigned. The sponsors of the conference offer to reimburse the attorney for expenses incurred in connection with his travel to New York. They also offer him, as compensation for his time and effort, a free trip to San Francisco. The attorney may accept the travel expenses to New York, but not the expenses to San Francisco. The lecture relates to his official duties under paragraphs (a)(2)(i)(E)(*1*) and (a)(2)(i)(E)(*2*) of § 2635.807, but because he is not a covered noncareer employee as defined in § 2636.303(a) of this chapter, the expenses associated with his travel to New York are not a prohibited form of compensation as to him. The travel expenses to San Francisco, on the other hand, not incurred in connection with the speaking activity, are a prohibited form of compensation. If the attorney were a covered noncareer employee he would be barred from accepting the travel expenses to New York as well as the travel expenses to San Francisco.

Example 4 to paragraph (a)(2)(iii): An advocacy group dedicated to improving treatments for severe pain asks the National Institutes of Health (NIH) to provide a conference speaker who can discuss recent advances in the agency's research on pain. The group also offers to pay the employee's travel expenses to attend the conference. After performing the required conflict of interest analysis, NIH authorizes acceptance of the travel expenses under 31 U.S.C. 1353 and the implementing General Services Administration regulation, 41 CFR part 304–1, and authorizes an employee to undertake the travel. At the conference the advocacy group, as agreed, pays the employee's hotel bill and provides several of his meals. Subsequently the group reimburses the agency for the cost of the employee's airfare and some additional meals. All of the payments by the advocacy group are permissible. Since the employee is speaking officially and the expense payments are accepted under 31 U.S.C. 1353, they are not prohibited compensation under § 2635.807(a)(2)(iii). The same result would obtain with respect to expense payments made by non-Government sources properly authorized under an agency gift acceptance statute, the Government Employees Training Act, 5 U.S.C. 4111, or the foreign gifts law, 5 U.S.C. 7342.

* * * * *

[FR Doc. 00–22612 Filed 9–1–00; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. FV96–983–1PR; AO F&V–983–1]

Pistachios Grown In California, Arizona, Nevada, New Mexico, and Utah; Termination of Proceeding on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This action terminates the proceeding to establish a marketing agreement and order for pistachios grown in California, Arizona, Nevada, New Mexico, and Utah. At the request of the pistachio industry, the Agricultural Marketing Service held a public hearing in August 1996 to receive evidence on a program proposed by the California Pistachio Commission and the Western Pistachio Association. The program would have authorized quality and container requirements and mandatory inspection. Subsequent to the hearing, the proponent industry groups requested that the proceeding be terminated. Given the lack of support for the proposal currently under consideration, the Department is terminating the proceeding.

DATES: The action is terminated as of September 6, 2000.

FOR FURTHER INFORMATION CONTACT: Kurt Kimmel, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or Anne Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on this action by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202)720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of hearing issued on July 26, 1996, and published in the **Federal Register** on July 31, 1996 (61 FR 39911).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12866.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

Preliminary Statement

In January 1996, the California Pistachio Commission (CPC) and the Western Pistachio Association (WPA), representing the U.S. pistachio industry, requested that the Department hold a public hearing to consider a proposed marketing agreement and order for pistachios grown in California, Arizona, Nevada, New Mexico, and Utah. The proposed program would have authorized quality and container requirements and mandatory inspection.

A notice of hearing was published in the **Federal Register** on July 31, 1996. The hearing was held in Fresno, California, August 20 through 23, 1996. At the conclusion of the hearing, the Administrative Law Judge fixed October 31, 1996, as the date for interested parties to file post-hearing briefs. Three briefs were received, all in opposition to the proposed order.

Based on a review of hearing evidence and post-hearing briefs, on April 9, 1997, the Department announced its plans to reopen the hearing to take additional evidence relating to the economic and marketing conditions that justified the need for a pistachio marketing order as well as the economic impact of the proposed order on the industry. We asked for public input on scheduling the hearing by May 9, 1997. On July 22, 1997, the Department extended to September 1, 1997, the period during which it would accept public comment on reopening the hearing. On October 3, 1997, we further extended the comment period until January 31, 1998. No comments were received during the period provided.

On June 22, 2000, the CPC and WPA requested that the proceeding be terminated.

Termination of Proceeding

In view of the above, the proceeding is hereby terminated.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: August 28, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–22577 Filed 9–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 206

[PSA–2000–01–a]

RIN 0580–AA71

Swine Packer Marketing Contracts

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to amend its regulations to implement the Swine Packer Marketing Contracts subtitle of the Livestock Mandatory Reporting Act of 1999. GIPSA is proposing new regulations to establish a library or catalog of types of swine marketing contracts used by packers to purchase swine and to make information about the types of contracts available to the public. GIPSA is also proposing new regulations to establish monthly reports of estimates of the numbers of swine committed for delivery to packers under types of existing contracts contained in the library or catalog.

DATES: Comments must be received on or before October 5, 2000. Comments on the information collection and recordkeeping requirements must be received on or before November 6, 2000.

ADDRESSES: Send comments to the Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Washington, DC 20250–3641. Comments may also be sent via facsimile to 202–205–3941 or via e-mail to comments@gipsadc.usda.gov. Please state that your comment refers to Swine Packer Marketing Contracts (PSA–2000–01–a), RIN 0580–AA71. Comments received may be inspected during normal business hours in the Office of the Deputy Administrator, Packers and Stockyards Programs, room 3039 (same address as listed above).

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Caughlin, Jr., Director, Office of Policy/Litigation Support, (202) 720–6951.

SUPPLEMENTARY INFORMATION:

Background

In recent years, the swine industry has undergone fundamental changes in its structure and marketing practices. In 1998, four firms slaughtered about 55 percent of all swine. On the producer side, about 2000 large swine operations held about 47 percent of the swine inventory and the remaining 96,000 smaller operations held about 53 percent in 1999 based on the December 1999 issue of Hogs and Pigs Report published by the National Agricultural Statistics Service (NASS).

Many packers have entered into private contractual marketing arrangements, especially with larger producers. In the last few years, swine packers have begun procuring the majority of their livestock through such contractual arrangements rather than spot market transactions. With these procurement methods, such as forward contracts, formula pricing, and exclusive purchase agreements, prices and terms of sale are not publicly disclosed. Because prices and terms of sale are not publicly disclosed, these procurement methods make it difficult for producers, particularly smaller ones, to evaluate alternative marketing arrangements. Packers and larger producers have more resources to assemble market and pricing information, putting smaller producers at a disadvantage in negotiating the best possible marketing arrangements for their swine.

In recent years, various industry, trade, and producer groups began to ask State and Federal lawmakers for mandatory reporting of information concerning the availability and terms of these arrangements. Many market participants claimed they were no longer able to obtain information, such as actual purchase prices of swine and other terms of marketing arrangements, on which to base their production and marketing decisions. Many large producers also indicated they were unable to evaluate and compare contracts because of the unknown premium and discount schedules,

which may be different in each marketing agreement. These circumstances prompted increased industry support for mandatory reporting of prices and information on contracts. Ultimately, Congress passed the Livestock Mandatory Reporting Act of 1999,[1] which includes requirements for mandatory price reporting by packers and requirements for reporting of certain information on the types of contracts used by packers for procurement of swine for slaughter. Producers and other concerned parties have indicated they believe the information that would be submitted in compliance with the requirements of the Livestock Mandatory Reporting Act will provide more transparency in the price discovery process and equalize access to market information for all market participants, large and small.

The Livestock Mandatory Reporting Act of 1999

The stated purpose of the Livestock Mandatory Reporting Act of 1999 (LMRA) amendments to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) (AMA) is to:

> Establish a program of information regarding the marketing of cattle, swine, lambs, and products of such livestock that—
>
> (1) provides information that can be readily understood by producers, packers, and other market participants, including information with respect to the pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products;
>
> (2) improves the price and supply reporting services of the Department of Agriculture; and
>
> (3) encourages competition in the marketplace for livestock and livestock products.

The program of information created by the LMRA is to be administered by the Agricultural Marketing Service (AMS), the Grain Inspection Packers and Stockyards Administration (GIPSA), and other agencies of the Department. AMS is responsible for implementing a program of mandatory reporting of market information (including transaction prices) on livestock and livestock products, which is contained in section 911 of the LMRA. This section of the LMRA amends the AMA by adding new sections 111 through 256. The proposed regulations to implement the mandatory reporting program have been published by AMS in a separate rulemaking.

The LMRA also established a program of information regarding the marketing of swine. GIPSA is responsible for implementing this program of information. Section 934 of the LMRA, which amends the Packers and Stockyards Act (7 U.S.C. 181 *et seq.*) (P&S Act), requires the Secretary to establish and maintain a library or catalog of the types of contracts offered by certain packers to swine producers. The Secretary is also required to make information concerning those types of contracts available to producers and other interested parties. Additionally, the Secretary is to obtain information from certain packers concerning the estimated numbers of swine to be delivered under contractual arrangements for slaughter within the 6- and 12-month periods following each monthly report.

Swine Packer Marketing Contracts

There is no legislative history to speak of to aid us in determining the intent of section 934 of the LMRA, which amends the P&S Act. This section of the LMRA imposes requirements upon the Secretary and also grants certain authority to the Secretary. We have reviewed the statutory language and the stated purpose of the LMRA, along with the known circumstances under which the LMRA was enacted and GIPSA's expertise in regulating the swine packing industry. As a result, we developed our interpretation of section 934 of the LMRA as follows.

Section 934 of the LMRA amends the P&S Act by designating current sections 201 through 207 of Title II as *Subtitle A—General Provisions*, adding new sections 221 through 223, and designating them as *Subtitle B—Swine Packer Marketing Contracts*.

The first section of Subtitle B, new section 221, provides a list of definitions. Title I of the P&S Act contains definitions of terms that appear throughout the P&S Act. New section 221 contains the definition of terms that are applicable only to new Subtitle B. Other terms in Subtitle B that are not defined in new section 221 are to have the meanings given those terms in new sections 212 or 231 of the AMA which were added by the LMRA. A more detailed discussion of the definitions in new section 221 follows below in the Definitions section of this document.

New section 222(a) of the P&S Act reads as follows:

> (a) In General.—Subject to the availability of appropriations to carry out this section, the Secretary shall establish and maintain a library or catalog of each type of contract offered by packers to swine producers for the purchase of all or part of the producers' production of swine (including swine that are purchased or committed for delivery), including all available noncarcass merit premiums.

New section 222(a) contains key terms, such as "library" and "catalog" that are not defined in new section 221 of the P&S Act nor in new sections 212 or 231 of the AMA. Nor does the LMRA provide guidance on the intent of the word "offered" as it is used in this section.[2] The library or catalog that this amendment requires the Secretary to establish would be the first of its kind. The undefined terms and lack of specific guidance permit us to interpret the language and determine what we believe to be the best means to institute the program of information contemplated by the LMRA.

To establish a library of the types of contracts offered by packers for the purchase of swine, we would require packers to provide samples of each type of contract in effect when the final rule becomes effective. These contracts are considered "existing" contracts, a term that appears later in subsection (d) of section 222. Because existing contracts are the result of the acceptance of contracts that were "offered," it is appropriate to begin the library with existing contracts. Once the library is established, packers would be required to report to GIPSA the "offer" of different or new types of contracts concurrently with making those contract offers to swine producers, without regard to whether these offers were accepted. Information from the contracts would be summarized and made available to the producers as described below in the Contract Library section of this document.

Although the library or catalog mandated by subsection (a) necessitates the collection of information from packers, it is subsection (d) of new section 222 that indicates the means of, and authority for obtaining that information. New section 222(d)(1)(A) of the P&S Act requires the Secretary to obtain information from packers regarding types of contracts.

Subsection (b) of new section 222 provides as follows:

> (b) Availability.—The Secretary shall make available to swine producers and other interested persons information on the types of contracts described in subsection (a), including notice (on a real-time basis if practicable) of the types of contracts that are being offered by each individual packer to, and are open to acceptance by, producers for the purchase of swine.

[1] Title IX of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act of 2000 (Pub. L. 106–78).

[2] In another subparagraph of new section 222, the wording raises a question as to whether the word "offered" is used synonymously with "available."

We find that this subsection requires information regarding the types of contracts contained in the library to be made available to the public. The subsection does not indicate that the Secretary should make the contracts themselves available to interested persons. Furthermore, the information regarding contract offers is to be made available on a "real-time basis if practicable." We find that this provision requires that notice of contract offers be made available in a time frame that allows the greatest number of producers to have the opportunity to take advantage of the offer. if such notice is practicable. The information we propose to make available to the public is described in the Contract Library section of this document.

New subsection 222(c) indicates that the confidentiality protections of new section 251 of the AMA that are afforded to packers reporting price information shall be applicable to packers providing contract information pursuant to subsections (a) and (b) of new section 222 of the P&S Act. Therefore, the information that would be made available pursuant to subsection (b) of this section shall not reveal the identities of parties to contracts or proprietary business information.

Subsection (d) of new section 222 sets out the authority granted to the Secretary to collect the information that must be made available and reported to the public. New section 222(d) of the P&S Act requires the Secretary to provide specific information in a monthly report: information on the types of contracts available from each packer; types of existing contracts for each packer; provisions contained in packer contracts that provide for expansion of numbers of swine committed under contract; and estimates of the number of swine committed under contract; and estimates of the maximum number of swine possibly committed for the following 6- and 12-month periods. Packers would be required to provide information on both "types of contracts available" and "types of existing contracts," which the Secretary would report on a monthly basis.

Subsection (d)(1), entitled *Information Collection*, reads:

(d) Information Collection.—

(1) In General.—The Secretary shall—

(A) obtain (by filing or other procedure required of each individual packer) information indicating what types of contracts for the purchase of swine are available from each packer; and

(B) make the information available in a monthly report to swine producers and other interested persons.

The information that the Secretary is required to make available is to be obtained by a filing or other procedure required of packers required to report. The authority to collect information from packers in subsection (d) would be employed to gather information regarding the types of contracts "offered" (new section 222(a)), "available" (new section 222(d)(1)(A)) and "existing" (new section 222(d)(2)(B)).

Subsection (d)(1)(A) requires packers to provide information on the types of contracts that are "available" for the purchase of swine, while subsection (a) addressed the types of contracts "offered" to producers for the purchase of swine. Arguably, the types of contracts "offered" to producers are the types of contracts "available" to producers, *i.e.*, the words "offered" and "available" could be read as synonymous. However, since different words are used in different subsections of the amendments, and since Congress could have used the same word in both subsections if Congress had intended the meaning to be identical, we have given a different interpretation to each.

We interpret "types of contracts available" to mean contracts that a packer currently is offering and that are open to acceptance by producers or that a packer is making available for renewal to producers currently under contract with that packer. We interpret "types of existing contracts" to mean the types of contracts that are currently in effect, *i.e.*, contracts that have one or more producers providing swine to a packer under these types of agreements. We interpret "types of contracts offered" to mean all contracts that a packer has made available to swine producers for the purchase of swine, including those that currently are available or in effect and those that previously were offered but are no longer open for acceptance. "Types of contracts offered" includes both "types of contracts available" and "types of existing contracts."

Subsection (d)(1)(B) requires the Secretary to make the information obtained in subsection (d)(1)(A) available to producers and other interested parties by publication of a monthly report. This reporting requirement is separate from the requirement of subsection (b) to make information available regarding the types of contracts offered to producers. We interpret the monthly reporting requirement in subsection (d) and the availability requirement in subsection (b) to require us to provide information monthly on the types of contracts "offered" to producers and to provide notice regarding the types of contracts "available" to producers on an on-going, "real-time" basis. As described below in the Contract Library section of this document, we would make information on "offered" contracts available to producers and other interested persons through the GIPSA homepage on the Internet. This information would also provide notice on the types of contracts "available" to producers. The notice of types of contracts "available" to producers would be updated on a real-time basis, to the extent practicable. Therefore, this information would fulfill requirements in subsection (b) to make information available.

Subsection (d)(2) describes the additional information the Secretary is required to report on a monthly basis and provides as follows:

(2) Contracted Swine Numbers.—Each packer shall provide, and the Secretary shall collect and publish in the monthly report required under paragraph (1)(B), information specifying—

(A) the types of existing contracts for each packer;

(B) the provisions contained in each contract that provide for expansion in the numbers of swine to be delivered under the contract for the following 6-month and 12-month periods;

(C) an estimate of the total number of swine committed by contract for delivery to all packers within the 6-month and 12-month periods following the date of the report, reported by reporting region and by type of contract; and

(D) an estimate of the maximum total number of swine that potentially could be delivered within the 6-month and 12-month periods following the date of the report under the provisions described in subparagraph (B) that are included in existing contracts, reported by reporting region and by type of contract.

Subsection (d)(2)(B) requires packers to provide and the Secretary to report the provisions in each type of contract that permit an expansion in the numbers of swine to be delivered to the packer in the following 6- and 12-month periods. The specific provisions used in contracts to permit an expansion in the numbers of swine to be delivered to the packer are numerous and it would be burdensome and onerous for packers to provide those provisions for each contract. We believe that these provisions fall into general categories that would provide adequate information to producers and other interested persons. Therefore, we interpret this subsection of the P&S Act amendment to require packers to indicate the types of existing contracts that contain a provision that permits the

expansion of the number of swine committed, and packers would categorize any such provision in general terms. Packers would indicate whether any contracts within each type of existing contract contain: (1) contractual terms that allow for a range of the number of swine to be delivered; (2) contractual terms that require a greater number of swine to be delivered as the contract continues; or (3) any other provisions that provide for expansion in the numbers of swine to be delivered. In the monthly report, the provisions for expansion of committed swine numbers and the estimates for maximum possible committed swine numbers for the following 6- and 12-month periods would be from existing contracts only.

New section 222(d)(2) of the P&S Act requires the Secretary to collect and publish and packers to provide, among other things, estimates of the total number of swine committed under existing contracts and the maximum total number of swine that could be delivered under existing contracts within the following 6- and 12-month periods. Further, the Secretary is required to publish these estimates in monthly reports. New section 222 of the Act does not contain an explicit requirement that packers provide estimates for each month of the following 6 and 12 months. However, we believe that the Secretary would be unable to accurately report estimates for the following 6- and 12-month periods unless packers compile and provide monthly data because we believe the estimates for the 6- and 12-month periods could vary each month. Therefore, the proposed rule would require packers to provide estimates of committed swine to GIPSA on a monthly basis.

The information that packers are required to provide to the Secretary would be published in a monthly report categorized by type of contract and reporting region. Among the factors we would consider in defining a region are: (1) relevant marketing areas; (2) statutory requirements to maintain confidentiality and protect proprietary business information; and (3) AMS definitions of regions in its reports of swine prices. To maintain confidentiality, and protect proprietary business information, the regions may change over time.

Subsection (e) of new section 222 provides:

> (e) Violations.—It shall be unlawful and a violation of this title for any packer to willfully fail or refuse to provide to the Secretary accurate information required under, or to willfully fail or refuse to comply with any requirement of, this section.

This subsection of the P&S Act provides notice to packers that to willfully fail or refuse to provide accurate information would constitute a violation of this section of the P&S Act. However, the subsection is silent as to what happens if a violation occurs, what penalties accrue for a violation, and how a violation of this section would be prosecuted. Section 203 of the P&S Act sets forth the procedures that the Secretary is authorized to follow whenever there is reason to believe that any packer has violated or is violating any provision of Title II of the P&S Act and the civil penalties that may be assessed if the Secretary determines that a violation has occurred. As stated above, the LMRA amendments added new sections 221 through 223 to Title II of the P&S Act. Therefore, we would follow the procedures set forth under section 203 of the P&S Act when there is reason to believe that a packer has violated any of the provisions in new sections 221 through 223.

New section 223 of the P&S Act directs the Comptroller General of the United States to provide the Agriculture committees in Congress with a report describing the jurisdiction, powers, duties and authorities of the Secretary of Agriculture that relate to packers [3] and those involved in the procuring, slaughtering or processing of swine covered by the P&S Act and other laws. GIPSA has no reporting obligations under this section of the Act.

The LMRA also includes a section on the expiration of the authority granted by its provisions. Section 942 of the LMRA states that:

> The authority provided by this title and the amendments made by this title terminate 5 years after the date of the enactment of this Act.

The President signed the appropriations act for Agriculture and other agencies on October 22, 1999. Therefore, the LMRA and the related amendments to the P&S Act will expire on October 22, 2004.

This proposed rule sets forth GIPSA regulations to implement section 934 of the LMRA. This regulatory program is intended to meet the purposes of providing to producers, packers and other market participants information that can be readily understood with respect to swine marketing contracts.

General Approach

The amendments to the P&S Act made by the LMRA require the Secretary of Agriculture to establish a program of information dealing with swine packer marketing contracts. First, new sections 222(a) and (b) of the P&S Act require the Secretary to establish and maintain a library of types of swine marketing contracts and make available information on those types of contracts. Second, new section 222(d) of the P&S Act requires the Secretary to collect specific information from packers and publish that information in a monthly report to the public.

We have reviewed contracts that packers use for the purchase of swine for slaughter obtained during previous GIPSA investigations. Based on our understanding of these contracts, we considered how to categorize them into "types of contracts" as required by the new subtitle of the P&S Act. A determining factor was the ability to collect and organize information in the library in a meaningful way to provide useful information. Another determining factor was to categorize the types of contracts broadly enough to be able to provide useful information for each region. In addition, the categories need to be flexible to adapt to changes in the way swine may be marketed for slaughter in the future.

There are many different types of contracts that packers use for the purchase of swine for slaughter. One way of categorizing these contracts would be by the names by which the contracts are commonly known, such as, window contracts, forward contracts, and exclusive purchase agreements. These are descriptive names for some types of contracts that are used by packers and producers. For example, a window contract generally specifies a low and/or high price (also called a "floor" and a "ceiling" price) that would be paid for swine. Window contracts sometimes use an accrual account or ledger to account for the difference in the contractual high or low price and a specified market. We determined that most producers know that packers in a region offer window contracts, forward contracts, or exclusive purchase agreements. Therefore, to categorize and report swine packer marketing contracts by these general descriptive names would not further the statutory goals of providing information on pricing, purchase contracting, or supply and demand conditions.

Another way of categorizing these contracts would be to use the categories suggested in the definition in new section 221 of the P&S Act for "type of contract" which identify the market or other method used to determine the base price (base price determination), as follows: Swine or pork market formula purchases, other market formula

[3] "Packer" as defined in section 201 of the P&S Act, not as defined in new section 221.

purchases, and other purchase arrangements. In addition, the definition in the amendments to the P&S Act specifies that the classification of contracts should specify the presence or absence of an accrual account or ledger. As described above, window contracts sometimes use accrual accounts or ledgers; further, window contracts may use any market or method to determine the base price. Therefore, if we classified contracts as window contracts, we would need to further classify the window contracts according to their base price determinations.

We believe that it would be more useful and in keeping with the purpose of the amendments to the P&S Act to classify the contracts by the three categories of base price determination (swine or pork market formula purchases, other market formula purchases, and other purchase arrangements) and the presence or absence of an accrual account or ledger as provided in the definition of "type of contract" in new section 221 of the P&S Act. This would result in the following six types of contracts: (1) swine or pork market formula purchases with a ledger; (2) swine or pork market formula purchases without a ledger; (3) other market formula purchases with a ledger; (4) other market formula purchases without a ledger; (5) other purchase arrangements with a ledger; and (6) other purchase arrangements without a ledger.

As mandated in new section 222(a) of the P&S Act, we would establish and maintain a library or catalog of each of these six types of contracts (contract library). New section 222 of the P&S Act does not specify what the contract library or catalog should be or how it should be established. A "catalog" could be a systematized list featuring descriptions of the listed types of contracts. A "library" could be a collection of materials that provide reference information for types of contracts. New section 222(a) of the P&S Act also mandates that the library or catalog of each type of contract offered by packers to swine producers for the purchase of swine for slaughter include all available noncarcass merit premiums. Noncarcass merit premiums (and discounts) are applied to the base price to calculate the actual price paid by the packer to the producer for swine. Noncarcass merit premiums (and discounts) are only some of the factors specified in contract terms that are used to calculate the actual price paid by packers for swine. Other factors that are essential to the calculation of the actual price include, but are not limited to, the determination and application of carcass merit premiums and discounts. We interpret the specific inclusion of all available noncarcass merit premiums in new section 222(a) of the P&S Act to mean that the library or catalog of the types of contracts offered by packers to swine producers should contain, and we should make available, information about contract terms (like noncarcass merit premiums) that may affect the calculation of the actual price paid to producers. We believe the best way to collect this information on contract terms would be for packers to submit copies of existing contracts to us. We would organize the submitted contracts by type of contract and use the submitted contracts as the reference materials to provide information to producers and other interested individuals on the types of contracts offered by packers, as required by new section 222(b) of the P&S Act. Therefore, we propose to require packers to submit copies of contracts that represent each of the types of contracts that they offered (as described in detail below in the Contract Library section of this document). This would enable us to establish a "library" of each type of contract offered by packers to swine producers for the purchase of swine for slaughter.

We would require that packers first group their contracts by the six types of contracts. Further, we expect that the contracts within the same type of contract would vary in their specific terms. As stated earlier, one of the purposes of the LMRA is to provide information with respect to the pricing and contracting for purchase for livestock. Therefore, we would obtain information and report on contracts that vary in terms related to the pricing of swine. The contract types identify a market or other method on which the calculation for the price of the swine is based. There can be many other components specified in a contract to determine the price of swine purchased by a packer for slaughter. Within each type of contract, we would require packers to group their contracts by variations in the components that determine the price of swine purchased by a packer for slaughter. Specifically, contracts would be considered identical if they are identical with respect to all four of the following components: (1) The base price or the determination of base price; (2) the application of an accrual account or a ledger; (3) carcass merit premiums and discounts schedules; or (4) the use and amount of noncarcass merit premiums and discounts. Identical contracts would be represented by a single contract that we would use as an example contract. We would require each packer to submit example contracts for each of the types of contracts that they have with producers to purchase swine for slaughter.

We would use this library of contracts as the resource for the information that new section 222(b) of the P&S Act requires the Secretary to make available to producers and other interested persons. We would not make available the contracts themselves or proprietary information in conformity with the confidentiality restrictions in new section 222(c) of the P&S Act and new section 251 of the AMA.

In addition, as required by new section 222(d) of the P&S Act, we would collect specific information from packers and publish that information in a monthly report to the public. The information that would be reported includes the types of contracts available from each packer, the provisions contained in each type of contract that provide for expansion in the number of swine to be delivered under contract for the next 6 and 12 months, and estimates of the number of swine committed and the maximum number of swine that potentially could be delivered under contract within the next 6 and 12 months.

All of this information could change from one month to the next. To ensure that the information in the monthly report is accurate and timely, we would require packers to file the required information monthly.

The contract library would require packers to file a copy of an example of each swine packer marketing contract currently in effect or available and an example of each new contract when it is offered. The monthly report would require packers to identify the types of contracts that are currently in effect and those that are available and provide estimates of the number of swine that could be delivered under the existing contracts in the next 6 and 12 months.

We would make both the information from the contract library and the monthly reports available on the GIPSA homepage (http://www.usda.gov/gipsa/) and at the GIPSA Packers and Stockyards Programs' Regional Office at Room 317, 210 Walnut Street, Des Moines, Iowa 50309 during normal business hours of 7:00 a.m. to 4:30 p.m. Central Time. The same information, in the same format, would be available from the GIPSA homepage and at the Regional Office.

We propose to implement the new sections of the P&S Act in regulations grouped in new Part 206 of Title 9 of the Code of Federal Regulations (the

regulations). The proposed regulations are described in detail below.

Definitions

Proposed section 206.1 of the regulations would provide definitions of certain words and terms. The definitions proposed in Part 206 would apply only to the implementation of the Swine Packer Marketing Contracts amendment to the P&S Act (codified at 7 U.S.C. §§ 198 and 198a). The proposed definitions would not apply to other regulations issued under the P&S Act or to the P&S Act as a whole.

New section 221 of the P&S Act specifies many of the definitions to be used in the implementation of the new sections to the P&S Act. New section 221(8) of the P&S Act requires that terms not specifically defined in new section 221 of the P&S Act have the meanings given to them in new sections 212 and 231 of the AMA. All of these definitions and any proposed clarifications of these definitions are explained below. The proposed definitions would be listed in alphabetical order and would constitute section 206.1 of the proposed regulations.

We propose to define *accrual account* as: "An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract. (Synonymous with "ledger," as defined in this section.)" The term "accrual account" is not defined in the LMRA amendments to the P&S Act or the AMA. The term, as used by swine packers and producers in the industry, is generally understood to refer to the same type of arrangement as a "ledger." Therefore, we propose to define "accrual account" and "ledger" synonymously to conform to standard industry practice.

Based on the use of the term "accrual account" in the definition of "types of contract" in new section 221(7)(B) of the P&S Act, we believe that the term "accrual account" needs to be defined for clarity. The definition of "type of contract" in the LMRA refers to accounts that must be repaid at the termination of the contract. However, contracts with accrual accounts may specify conditions that could change the rights and obligations of the contracting parties, including deferring the repayment of the balance in the account. Therefore, we propose to define arrangements that could defer payment or otherwise change rights and obligations under the contract based on the balance in the account as "accrual accounts" also.

For purposes of reporting, the existence of an accrual account in a contract would be used to classify the type of contract. The application (or use) of an accrual account (*e.g.*, the time frame for repaying the balance of the accrual account) would be used to determine whether a specific contract is a unique contract that the packer would be required to file with GIPSA under the proposed rule.

We propose to define *base price* as: "The price paid for swine before the application of any premiums or discounts, expressed in dollars per unit." New section 212 of the AMA defines *base price* as: "The price paid for livestock, delivered at the packing plant, before application of any premiums or discounts, expressed in dollars per hundred pounds of carcass weight." For purposes of implementing the swine contract library, we propose to exclude the requirement that the price be limited to the price paid for swine delivered at the packing plant because some contracts specify or allow swine to be delivered to another location, such as a buying station. We also propose to exclude the requirement that price be expressed in dollars per hundred pounds of carcass weight because some contracts do not express price in carcass weight units. Some purchase contracts express price in terms of live weight or grain prices, and in the future some may use pricing of other products, such as primal cuts. Therefore, to establish a library of types of contracts offered by packers to swine producers, we must obtain contracts without limiting the definition of base price to include only those contracts that express base price using plant delivered prices in terms of dollars per hundred pounds of carcass weight. In addition, the word "livestock" would be replaced with "swine" because the new sections of the P&S Act concern only swine.

In contracts for the purchase of swine by a packer, the base price is used as a starting point for determining the price that will be paid for the swine. A variety of factors can be included in determining the price paid for swine, such as how lean the meat is (where the carcass falls into the range of lean percent), the weight of the carcass, the time of delivery, and the market or formula used to determine the base price. As specified in the definition, the actual base price is a dollar amount. The adjusted base price, as generally understood by packers and producers, is the base price adjusted based on the application of carcass merit premiums or discounts. Generally, a contract will specify a schedule to be used to determine the amount of the premium or discount to be applied to the base price after the merits of the carcass have been identified. This schedule of carcass merit premiums or discounts is also known among packers and producers as a grid or matrix; in this document, we will use the term schedule. The schedule identifies the merits of the carcass that are used to determine the premiums and discounts and identifies the premiums and discounts for specific ranges of the identified carcass merits. For example, a schedule may specify premiums and discounts based on the lean percent of the carcass. In addition to specifying the merits of the carcass used in the schedule, the packer determines the method used to measure the merits of the carcass.

We propose to define *contract* as: "Any agreement, whether written or verbal, between a packer and a producer for the purchase of swine by a packer for slaughter, except a negotiated purchase (as defined in this section)." Although the term "contract" is not defined in the LMRA, Part 206 would include the proposed definition to make it clear that the contract library would only include agreements that did not meet the definition of a "negotiated purchase" listed below. Market procurement methods that are sometimes called "non-spot," such as forward contracts, formula pricing, and exclusive purchase agreements, would be considered contracts under this definition of contract. In negotiated purchases, the buyer-seller interaction that results in a transaction and the agreement on the actual base price occur on the same day and the swine are delivered less than 14 days after the buyer and seller agree on a transaction. In contrast, in contract purchases either the buyer-seller interaction that results in a transaction and the agreement on the actual base price occur on different days or the swine are delivered more than 14 days after the buyer and seller agree on a transaction. In addition to written agreements, the proposed definition of "contract" would include verbal agreements. Based on our recent review of swine procurement practices, we believe that many marketing contracts for the purchase of swine are verbal agreements. To accomplish the statutory requirement of establishing a library of

types of contracts offered by packers, verbal agreements must be included in the definition of "contract." Therefore, packers would be required to provide written descriptions of the terms of all agreements for the purchase of swine for slaughter for which the parties did not execute a document to signify the existence of the agreement. The packer would be required to provide all terms of a verbal contract to GIPSA including, but not limited to, the base price determination, a schedule of any carcass merit premium and discount (including the manner of determining lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied), noncarcass merit premiums and discounts, the application of a ledger or accrual account, and the length of the agreement.

We propose to define *formula price* as: "A price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula." The proposed definition would be taken verbatim from the AMA, new section 231(6). A "specified market" would be a market specified by the contract. The market may be a publicly reported market, such as the Iowa-Southern Minnesota Direct market, or may be a "market" that is not publicly reported, such as plant average prices paid. A formula price and the specified market would be identified in the base price determination.

As explained above, we propose to define *ledger* and would define it to be synonymous with the proposed definition of "accrual account."

We propose to define *negotiated purchase* as: "A purchase, commonly known as a cash or spot market purchase, of swine by a packer from a producer under which: (1) The buyer-seller interaction that results in the transaction and the agreement on actual base price occur on the same day; and (2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the swine are committed to the packer." The proposed definition would be derived from new section 212(8) of the AMA. The word "livestock" would be replaced with "swine" because the new sections of the P&S Act concern only swine. The proposed definition would clarify the statutory phrase "on a day" to specify that a transaction would not be considered to be a "negotiated purchase" unless the buyer-seller interaction that results in the transaction and the agreement on the actual base price occur on the same day. Negotiated purchases contrast with contracts, where either the buyer-seller interaction that results in the transaction and the agreement on the actual base price occur on different days, or the swine are delivered more than 14 days after the buyer and seller agree on a transaction. Although the definition for "negotiated purchase" would be included in the new regulations for clarity, the new regulations would not apply to negotiated purchases.

We propose to define *noncarcass merit premium or discount* as: "An increase or decrease in the price for the purchase of swine offered by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine." New section 231(9) of the AMA defines *noncarcass merit premium* as: "An increase in the base price of the swine offered by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium is known before the sale and delivery of the swine." For purposes of implementing the swine contract library, we propose to clarify the statutory definition. Because the noncarcass merit premium or discount is more accurately tied to the purchase price offered by the packer than the selling price offered by the producer, we propose to clarify the definition by replacing the word "sale" with the word "purchase." In addition, we propose to replace the term "base price" with "price" because noncarcass merit premiums and discounts can be applied to the base price before or after carcass merit premiums or discounts have been applied. Finally, we propose to clarify the definition to include "noncarcass merit discounts" because packers assess both premiums and discounts.

We propose to define *other market formula purchase* as: "A purchase of swine by a packer in which the pricing determination is a formula price based on any market other than the markets for swine, pork, or a pork product. The pricing determination includes, but is not limited to: (1) A price formula based on one or more futures or options contracts; (2) A price formula based on one or more feedstuff markets, such as the market for corn or soybeans; or (3) A base price determination using more than one market as its base where at least one of those markets would be defined as an "other market formula purchase." New section 231(10) of the AMA defines *other market formula purchase* as: "A purchase of swine by a packer in which the pricing mechanism is a formula price based on any market other than the markets for swine, pork, or a pork product. The term 'other market formula purchase' includes a formula purchase in a case in which the price formula is based on one or more futures or options contracts." For purposes of implementing the swine contract library, we propose to clarify the statutory definition.

A pricing "mechanism" is a formula or set of factors used to determine price; for clarity, in this definition and throughout the proposed regulation, we use the term "pricing determination" instead of "pricing mechanism." The proposed definition would expressly include a contract that uses a market for feed for its pricing determination. In addition, the proposed definition also would explicitly classify a contract that uses more than one type of market in the price determination. For example, a contract in which the swine are sometimes priced from a swine market and sometimes priced from corn and soybean markets would be classified as an "other market formula purchase." The proposed regulation would add this language to clarify how these contracts would be classified. Without this clarification, it would be unclear whether these mixed contracts would be classified as "swine or pork market formula contracts" or "other market formula contracts." Other market formula purchases with and without accrual accounts or ledgers would be two of the six categories for types of contracts that must be filed by packers.

We propose to define *other purchase arrangement* as: "A purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase, and does not involve packer-owned swine." The proposed definition would be from new section 231(11) of the AMA. The "other purchase arrangement" category would include contracts that are not included in the "swine or pork market formula purchases" or "other market formula purchases" categories, as they are defined in this section. In addition, the definition specifies that "other purchase arrangements" would not include a "negotiated purchase," as defined in this section. Other purchase arrangements with and without accrual accounts or ledgers would be two of the six categories for types of contracts that must be filed by packers.

We propose to define *packer* as: "Any person or firm engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing

or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part would only apply to a packer slaughtering swine at a federally inspected swine processing plant that meets either of the following conditions: (1) A swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine; or (2) Any swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years that has the capacity to slaughter at least 100,000 swine per year, based on plant capacity information."

New section 231(12) of the AMA defines *packer* as: "Any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce, except that: (1) The term includes only a swine processing plant that is federally inspected; (2) For any calendar year, the term includes only a swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years; and (3) In the case of a swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years, the Secretary shall consider the plant capacity of the processing plant in determining whether the processing plant should be considered a packer under this chapter."

The definition in section 231 of the AMA defines a "packer" as a "plant." For clarity, we propose to distinguish between packers and plants. When we use the term "packer," we mean "Any person or firm engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce." When we the term "plant," we mean an individual swine processing or packing plant. Under the proposed rule, a packer would be required to submit the required contract examples and monthly information for each swine processing or packing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity specified in the definition of "packer," and only those individuals defined as packers who use plants meeting the slaughtering capacity specified in the proposed definition of "packer" would be required to submit the required contract examples and the monthly information.

We believe that the definition of "packer" in section 231 of the AMA is intended to identify all packers that slaughter at plants of the specified slaughtering capacity to ensure that these packers submit example contracts and monthly information. Most swine processing plants are owned and operated by packers. However, some packers contract with other swine processing plants to slaughter swine that the packer purchases. In these cases, the packer has a contract with the producer to purchase swine for slaughter. If we limit the reporting obligation to those packers who own or operate their own slaughtering facilities, the contract library would not include those contracts entered by packers whose swine is slaughtered or processed at plants owned and operated by other entities. Therefore, we propose to include all plants, even those that are not owned or operated by a packer, that meet the slaughtering capacity specified by in the definition of packer.

The definition of "packer" in section 231 of the AMA includes a swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years. Annual swine slaughter data for 1994 through 1998 show that some swine processing plants slaughtered more than 100,000 swine annually during one or more of those 5 years, but did not slaughter an average of 100,000 for the 5-year period because they did not slaughter swine throughout every year. For example, there were several new plants that opened after 1994 that slaughtered more than 100,000 swine each year after they began operations. However, when the average number of slaughtered swine is calculated over the full 5-year period, these plants slaughtered less than 100,000 swine per year during the immediately preceding 5 calendar years. The same is true of plants that were used to slaughter swine at the beginning and end of this 5-year period, but not to slaughter swine throughout one or more of the intervening years. Consider a plant that does not operate in Year 1, Year 3 or Year 4 but slaughters 50,000 head in Year 2 and 250,000 head in Year 5. The average annual slaughtering capacity for this plant over the five year period (Years 1 through 5) would be 60,000 head per year (300,000 head divided by 5 years = 60,000 head per year). The average annual slaughtering capacity for this plant over the years in which it operated (Years 2 and 5) would be 150,000 head per year (300,000 head divided by 2 years = 150,000 head per year). Because we believe that the purpose of the new legislation is to obtain information from packers using plants of comparable size, the proposed rule would clarify that the average used to determine whether a packer is required to submit example contracts and monthly information for a specified plant would be based on the plant's average slaughtering capacity in the years during which the plant slaughtered swine, even if that period is less than five years.

The definition of packer in section 231 of the AMA requires the Secretary to consider the plant capacity in determining whether a processing plant should be considered a "packer" for reporting requirements when the plant did not slaughter swine during the preceding 5 calendar years. The proposed regulatory definition reflects our determination that a swine processing plant that has the capacity to slaughter at least 100,000 swine per year would be comparable in slaughtering capacity to plants that meet the definition in the AMA. Packers know the capacity of their swine processing plants. Therefore, a packer would know if a plant would meet this capacity requirement. During the normal course of business of enforcing the P&S Act, we would become aware of the capacity estimates for new swine processing plants. Based on that capacity information, we would also know which plants would meet this definition and would notify the packer that owns or uses a qualifying plant if no report is filed.

We propose to define *producer* as: "Any person engaged, either directly or through an intermediary, in the business of selling swine to a packer for slaughter (including the sale of swine from a packer to another packer)." The proposed definition would be derived from new section 212(11) of the AMA. We propose to specify that producers may sell swine to a packer either directly or indirectly through an intermediary, like a marketing cooperative or other market agency. In addition, we would replace the word "livestock" with "swine" because the new sections of the P&S Act concern only swine. With this definition, the regulations would explicitly exclude

producers who sell feeder pigs to another producer or to a packer for feeding.

We propose to define *swine* as: "A porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter." The proposed definition would be taken verbatim from section 231(20) of the AMA.

We propose to define *swine or pork market formula purchase as:* "A purchase of swine by a packer in which the pricing determination is a formula price based on a market for swine, pork, or a pork product, other than a futures contract or option contract for swine, pork, or a pork product." The proposed definition is from section 231(21) of the AMA. Swine or pork market formula purchases with and without accrual accounts or ledgers would be two of the six categories for types of contracts that must be filed by packers.

We propose to define *type of contract* as: "The classification of contracts or risk management agreements for the purchase of swine committed to a packer by the determination of the base price and the presence or absence of an accrual account or ledger (as defined in this section). The type of contract categories are: (1) swine or pork market formula purchases with a ledger; (2) swine or pork market formula purchases without a ledger; (3) other market formula purchases with a ledger; (4) other market formula purchases without a ledger; (5) other purchase arrangements with a ledger; and (6) other purchase arrangements without a ledger." New section 221 of the P&S Act defines *type of contract* as: "The classification of contracts or risk management agreements for the purchase of swine by: (1) The mechanism used to determine the base price for swine committed to a packer, grouped into practicable classifications by the Secretary (including swine or pork market formula purchases, other market formula purchases, and other purchase arrangements); and (2) The presence or absence of an accrual account or ledger that must be repaid by the producer or packer that receives the benefit of the contract pricing mechanism in relation to negotiated prices." For purposes of implementing the swine contract library, we propose that the statutory definition specify the categories that would be used for grouping contracts. In addition, we propose to simplify the definition to specify that the type of contract depends on the presence or absence of a ledger or accrual accounts.

Within these six categories, any contract that differs from other contracts in the determination of base price, the application of a ledger or accrual account, carcass merit premium and discount schedules (including the manner of determining lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied), or the use or amount of noncarcass merit premiums and discounts would be an example of a unique contract that must be filed by the packer and reported by GIPSA.

The type of contract would specify the existence of a ledger or accrual account. Ledgers and accrual accounts can vary in the way in which they are used. Therefore, we would require packers to use the terms and conditions of the ledger or accrual account provisions as one of the four criteria for identifying unique contracts. Throughout this proposed rule, we use the term "application of a ledger or accrual account" to represent the terms and conditions of the ledger or accrual account provisions that would be specified in a contract to identify how the ledger or accrual account would function.

Contract Library

Proposed section 206.2 of the regulations would address the criteria set out in new section 222 of the P&S Act for establishing and maintaining a swine packer marketing contract library. New section 222(a) of the P&S Act states that the Secretary shall establish and maintain a library or catalog of each type of contract offered by packers to swine producers for the purchase of swine.

As discussed above, we determined the best way to collect information for the library would be for packers to submit copies of contracts to us. Therefore, we needed to decide which contracts to require packers to file.

We considered requiring packers to file every contract they have with each individual producer. This approach, however, would be burdensome to packers and repetitive contracts would not provide additional information on the range of contracts existing in the industry. Therefore, we decided to require packers to file example contracts.

As specified in section 206.2(a), (b), and (c) of the regulations, we would require each packer to file an example of each unique contract within each type of contract category currently in effect or available and an example of each new contract that is offered at each plant at which the packer slaughters swine. To decide which contracts would serve as examples for similar or unique contracts, as specified in section 206.2(d) of the regulations, we propose to require packers to submit an example of each contract that varies in (1) the base price or the determination of base price; (2) the application of an accrual account or a ledger; (3) carcass merit premium and discount schedules (including the manner of determining lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied); or (4) the use and amount of noncarcass merit premiums and discounts. For contracts that are identical in all four respects listed above, a packer would need to file only one example contract for each plant that uses that type of contract to purchase swine. This would meet the requirements in new sections 221 and 222 of the P&S Act.

New section 221(7) (definition of "type of contract") of the P&S Act requires contracts to be grouped by the method of base price determination and whether a ledger exists. New section 222(a) of the P&S Act requires that the contract library also include all available noncarcass merit premiums. As discussed above, we determined that the contract library should also include information on noncarcass merit discounts, terms and conditions of the ledger or accrual account provisions, and carcass merit premium and discount schedules. The information on carcass merit premium and discount schedules would include the method the packer uses to determine the lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts, the amounts of the premiums and discounts, and how those premiums and discounts are applied. This information is essential to producers interested in the range of contracts existing in the industry because the carcass merit premiums and discounts are major factors in determining the actual price paid to producers for swine.

To make the initial submission of example contracts currently in effect and available, packers would mail, or otherwise deliver, a copy of each example contract in use at any of its plants to our Regional Office in Des Moines, Iowa, as specified in section 206.2(e) of the regulations. For a packer with more than one plant that has the slaughtering capacity specified in the definition of "packer," a separate package of example contracts would be submitted for each plant. Using this criterion, a packer that uses the same contract to purchase swine for slaughter at different plants will be required to

submit the same example contract in the package submitted for each plant.

The initial submission would be due the first business day of the month following the determination that the plant has the slaughtering capacity specified in the definition of "packer." For subsequent submissions, the packer would determine if a newly offered contract would be a new example contract for the plant. For offered contracts that represent a new example contract at that plant, the packer would send via mail, facsimile, or other delivery method a copy of the offered contract to our Regional Office in Des Moines, Iowa, on the same day the contract was offered. The information made available to the public from the contract library would be updated to reflect new contracts being offered.

In addition to submitting example contracts, packers would need to notify us of any contract changes, expirations, or withdrawals to previously submitted example contracts. The packer's example contracts should represent each type of contract offered by the packer to swine producers for the purchase of swine for slaughter. If changes to a contract, the expiration of a contract, or the withdrawal of an offered contract result in a change, expiration, or withdrawal of the example contract, then, as specified in section 206.2(h) of the regulations, the packers must notify GIPSA. Specifically, if contract changes result in changes to any of the four criteria specified above to identify example contracts, then the packer must submit a new example contract. In addition, the packer must notify GIPSA that the new example contract replaces the previously submitted example contract. If an example contract no longer represents any existing or offered contracts, then the packer must notify GIPSA on the day that the contract expires or is withdrawn. In addition, this notification must specify the reason, for example, changes to a contract, expiration of an existing contract, or withdrawal of an offered contract.

Various factors, such as the number of example contracts, the packer's method of maintaining contract information, and technological advances, would determine the most efficient method for submitting example contracts to GIPSA for the contract library. Therefore, we propose to allow packers to select, subject to approval by GIPSA, the submission method subject to the requirements for timely filing.

Proposed section 206.2(f) specifies the information that would be made available from the contract library to producers and other interested persons. We would use the example contracts submitted by packers as the resource for the information required to be made available to producers and other interested persons by new section 222(b) of the P&S Act.

New section 222(b) of the P&S Act requires the Secretary to make available to swine producers and other interested persons information on the types of contracts collected for the swine contract library. When the packer submits example contracts, the packer would specify the "type of contract" category applicable to each example contract. Within each of the six types of contract categories, example contracts would vary in contract terms for base price determination, the application of accrual accounts or ledgers, carcass merit premium and discount schedules, the use and amount of noncarcass merit premiums and discounts, and other contract terms. We would summarize information on contract terms from example contracts in the contract library as shown in the sample below. As specified in new section 222(c) of the P&S Act and new section 251 of the AMA, the information that we would make available would not disclose the identities of the parties to the contracts, including packers and producers. To ensure that confidentiality would be preserved regarding the identities of persons, including parties to a contract, and the proprietary nature of the information included in the contracts, we would present the contract library information without indications about how contract terms correspond to an example contract, packer, plant, or producer. The contract library information would provide a summary of the types of contract provisions that are available in each region.

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NOTE: Sample only. Not intended to represent actual contract information.

Range of Contract Terms in the Western Cornbelt Region for Swine or Pork Market Formula Contracts with a Ledger

- Base Price Determination
  - USDA Market News Western Cornbelt
    Opening Report
    Base market hog 49-51 % lean
    Weighted Average
    Plus $1.00
    Day of Delivery
  - USDA Market News Iowa-Southern Minnesota Direct
    Mid-Session
    Base market hog
    Weighted Average
    Plus $1.50
    Day prior to delivery
  - USDA Market News Western Cornbelt
    Closing Report
    Midpoint between low of 47-48 % and high 49-50 %
    Plus $0.75
    Average of three days prior to delivery

- Noncarcass Merit Premiums and Discounts
  Delivery before 7:00 a.m. = $0.75 premium

- Carcass Merit Premiums and Discounts

Range of Premiums and Discounts for Certain Lean Percentages, 185 Pound Carcass

Range of Percent Lean*	Premiums & Discounts in $ per 100 Pounds	Premiums & Discounts as a % of base price
57 – 58 %	$2 – 5	102 – 107 %
55 – 56	1 – 3	102 – 105
53 – 54	0 – 2	101 – 104
51 – 52	(1) – 1	98 – 102
49 – 50	(4) – (1)	96 – 100
47 – 48	(5) – (2)	90 – 95

*Lean percent can vary across packers depending on the device and estimation formula used. Devices used to estimate lean percent in this region include: AutoFOM, Carcass Value Technology (also known as AUS CVT), Fat-O-Meat'er, a ruler, and UltraFOM. Various estimation formulas may be used with each device. It is important to understand that different formulas used with the same device can result in different estimations of lean percent.

Range of Premiums and Discounts for Certain Carcass Weights

Carcass Weight in Pounds	Premiums & Discounts in Dollars per 100 Pounds
145	$ (20) – (5)
155	(10) – (4)
165	(5) – 0
175	(2) – 0
185	0
195	0
205	(2) – 0
215	(4) – (1)
225	(5) – (2)

- Application of Ledgers or Accrual Accounts Used in This Region Include:
  - Repayment of balance in the ledger or accrual account
  - Contract extension as a substitute for repayment of the balance of the ledger or accrual account
  - Forgiveness of ledger or accrual account balance at the termination of the contract

- Quality and Weight Restrictions
  - Producers must have certified at Pork Quality Assurance Program Level III
  - Hogs must be free of carcass defects (e.g. bruising), foreign objects (e.g. needles)

- Other General Contract Terms
  - Requires that producer uses specific genetics
  - Packer has the right of first refusal to purchase hogs in excess of the number specified in the contract

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As shown in the sample contract library report above, the contract library information would be provided by region and type of contract. Sample information is shown for swine or pork market formula contracts that use a ledger or accrual account. Under the base price determination, the sample shows how the base price would be determined under different available contracts using specified swine or pork markets (USDA Market News Western Cornbelt and USDA Market News Iowa-Southern Minnesota Direct) and other components of the formulas specified in available contracts to calculate the base price. Specifically, in the first base price formula, the base price would be determined by adding one dollar to a specified price listed in the opening report of the USDA Market News Western Cornbelt region on the day the swine are delivered to the packer. The specified price, in this case, would be the price listed as the weighted average for a base market hog in the 49–51 percent lean range. The information listed for base price determinations would vary based on the formulas used in each of the example contracts. Since base price determination is one of the criteria used to identify example contracts, the contract library would contain each unique base price determination.

The example contracts would provide the contract library with unique base price determinations, the application of ledgers or accrual accounts, carcass merit premium and discount schedules, and the use and amount of noncarcass merit premiums. Other contract terms that could be reported include a variety of terms that could affect producer's marketing decisions, such as quality and weight restrictions, length of contract, and use of packer specified genetics. These other contract terms would not be included in the criteria used to identify example contracts. Therefore, the information contained in the contract library on such other contract terms may not represent the full range of alternatives that packers are offering or have offered. We propose to summarize information on contract terms from the example contracts contained in the contract library to provide as much information about contract terms as possible, subject to the confidentiality protections.

We anticipate that interested parties, primarily producers, would use the summarized information that we provide from the contract library to determine the range of options in contracts offered by packers. The producer could identify the contract provisions of interest and approach packers or plants within the region to negotiate a contract. Although producers would not know which packers are offering any of the provisions listed in the summarized information or how those provisions would be combined in any contract, we expect the knowledge that those provisions exist in the marketplace could result in the producer conducting additional searches for contracts, agreements, or provisions that result in a more favorable transaction for the producer.

Monthly Reports

New section 222(d) of the P&S Act requires the Secretary to collect specific information from packers that are subject to this rule and publish the information in a monthly report. As directed in new sections 222(d)(1), (d)(2)(A), (d)(2)(B), (d)(2)(C), and (d)(2)(D) of the P&S Act, respectively, this monthly report would provide a summary of the types of contracts available from packers, types of existing contracts, provisions contained in packers' existing contracts that provide for an expansion in the number of swine committed under existing contract, and estimates of the number of swine committed under contract within the following 6- and 12-month periods, and estimates of the maximum number that could be committed under existing contracts for the following 6- and 12-month periods.

We interpret the monthly report requirement as mandating that the Secretary publish as much information collected from packers each month as possible, subject to the requirement to maintain confidentiality as discussed above. We interpret "types of contracts available," as specified in new section 222(d)(1) of the P&S Act, to mean all types of contracts that are available for acceptance by producers, whether or not actually accepted by a producer. We interpret "types of existing contracts," as specified in new section 222(d)(2)(A) of the P&S Act, to mean all contracts that currently have one or more producers providing swine under these agreements because these contracts have been offered, accepted, and are in place. In the monthly report, the provisions for expansion of committed swine numbers and the estimates for maximum possible committed swine numbers for the next 6 and 12 months would be from existing contracts only because there would be no estimates for contracts that had been offered, but not accepted. As specified in proposed section 206.3 of the regulations, packers would provide information on types of contracts available, types of existing contracts, and contract provisions that provide for expansion of committed swine numbers for each of their swine processing plants that has the slaughtering capacity specified in the definition of "packer."

New section 222(d)(2) of the P&S Act requires packers to provide, among other things, estimates of the total number of swine committed by contract and the maximum total number of swine that could be delivered within the 6- and 12-month periods following the date of the report. Although new section 222 of the P&S Act does not require that packers report information for each month of the following 6- and 12-month periods, we believe that packers would have to compile monthly data in order to prepare the required estimates. Proposed section 206.3(c)(3) of the regulations would require packers to provide information on swine committed for delivery under contracts for each of the next 12 months. We would calculate the aggregate 6-and 12-month totals and publish them in the monthly report. We believe that collection of monthly data would enable GIPSA to better monitor the accuracy of the estimates. With monthly data, we would be able to develop better statistical measures of the precision of the estimates that would enhance their utility to producers and others who would use the information.

New section 222(d)(2)(B) of the P&S Act requires packers to report on the provisions contained in each contract that provide for expansion in the numbers of swine to be delivered under contract for the next 6 and 12 months. New section 222(d)(2)(D) of the P&S Act requires an estimate of the total number of swine that potentially could be delivered under contract. In proposed section 206.3 of the regulations, paragraphs (c)(3) and (c)(5) would require each packer to provide an estimate, by month, for the next 12 months, of the number of committed swine by the type of contract, as well as an estimate of what could potentially be delivered if all existing expansion clauses in contracts are exercised.

Proposed section 206.3(d) of the regulations would require packers to estimate the number of swine that could be delivered under contracts that do not specify a number. Packers should be able to develop reasonably accurate estimates since they would normally do so for their own planning purposes.

We propose to have packers use new PSP Form 341, shown below, to provide the information required for the monthly report. In monthly reports, the packer would provide information for all of the contracts for each of its plants that has the slaughtering capacity

specified in the definition of "packer." Therefore, if a packer uses more than one plant subject to proposed 9 CFR Part 206, the packer would submit a separate monthly report for each plant. The packer would estimate the number of swine to be delivered under each of the contracts at the plant, aggregated by type of contract. The packer would be required to submit a report for each plant that has the slaughtering capacity specified in the definition of "packer," even if a plant had no existing contracts for which to report estimated deliveries of swine.

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NOTE: Sample only. Not intended to represent actual contract estimates.

PACKER/PLANT REPORT
ESTIMATES OF SWINE COMMITTED TO BE DELIVERED UNDER CONTRACT

FIRM NAME: Anyfirm Packing Company
PLANT NAME: Anyfirm Central
STATE WHERE PLANT IS LOCATED: Iowa
CONTACT NAME: Jamie Doe
DATE OF REPORT: 8/11/2000
FEDERAL INSPECTION NUMBER: 00000
PHONE NUMBER: (515) 000-000
TITLE: Head Buyer

Submit a separate report for each plant that has the slaughtering capacity specified in the definition of "packer" in 9 CFR 206.1. Provide estimates for each of the next 12 months.

I certify that the estimates provided in this report are accurate as of the date of the report.

NUMBER OF HEAD OF ESTIMATED DELIVERIES OF SWINE

NUMBER OF SWINE PER MONTH		EXISTING CONTRACT TYPES					
Month/ Year		Swine or pork market formula with ledger	Swine or pork market formula without ledger	Other market formula with ledger	Other market formula without ledger	Other purchase arrangement with ledger	Other purchase arrangement without ledger
9/2000		1,000	46,800				
10/2000		1,000	46,800				
11/2000		1,000	47,000				
12/2000		1,000	47,000				
1/2001		1,000	47,000				
2/2001		1,000	46,800				
3/2001		1,000	46,800				
4/2001		1,000	47,000				
5/2001		1,000	47,200				
6/2001		1,000	47,200				
7/2001		1,000	47,200				
8/2001		1,000	47,200				
Available contracts*			X				

NUMBER OF HEAD OF ESTIMATED MAXIMUM DELIVERIES OF SWINE

NUMBER OF SWINE PER MONTH		EXISTING CONTRACT TYPES					
Month/ Year		Swine or pork market formula with ledger	Swine or pork market formula without ledger	Other market formula with ledger	Other market formula without ledger	Other purchase arrangement with ledger	Other purchase arrangement without ledger
9/2000		1,000	47,800				
10/2000		1,000	47,800				
11/2000		1,000	48,000				
12/2000		1,000	48,000				
1/2001		1,000	48,000				
2/2001		1,000	49,000				
3/2001		1,000	49,000				
4/2001		1,000	49,000				
5/2001		1,000	49,000				
6/2001		1,000	49,000				
7/2001		1,000	49,000				
8/2001		1,000	49,000				
Expansion clauses in contracts**			1, 3				

*"Available contracts" means that producers may obtain this type of contract. Place an X in the appropriate box to indicate that this type of contract is currently available to producers.

**Place one of the following codes in the appropriate box to indicate the types of expansion provisions in use:

(1) Terms that allow for a range in the number of swine to be delivered
(2) Terms that require a greater number of swine to be delivered as the contract continues
(3) Other provisions that provide or allow for expansion in the numbers of swine to be delivered

PSP Form 341

Although monthly estimates would be collected to allow GIPSA to generate the estimates for the following 6- and 12-month periods, release of such monthly data could risk violating confidentiality restrictions. The proposed release of aggregated 6- and 12-month totals would fulfill the requirements of new sections 222(d)(1)(B) and (d)(2) of the P&S Act without jeopardizing the sensitive nature of the underlying information. This aggregated information is expected to greatly increase the quantity and quality of available market information, and aid producers in making informed marketing decisions.

The information in the monthly report received from all reporting packers would be aggregated and reported by GIPSA on a regional basis as shown in the example below.

NOTE: Sample only. Not intended to represent actual contract estimates.

ESTIMATES OF SWINE COMMITTED TO BE DELIVERED UNDER CONTRACT
IN THE WESTERN CORNBELT REGION
(Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota)

Deliveries beginning: September 1, 2000

ESTIMATED DELIVERIES

Contract type	Available contracts*	Number of swine estimated to be delivered during the: Next 6 months	Next 12 months
Swine or pork market formula with ledger		290,000	580,000
Swine or pork market formula without ledger	X	14,790,000	29,580,000
Other market formula with ledger		2,610,000	5,220,000
Other market formula without ledger	X	3,000,000	6,000,000
Other purchase arrangement with ledger	X	275,000	550,000
Other purchase arrangement without ledger	X	580,000	1,160,000

ESTIMATED MAXIMUM DELIVERIES

Contract type	Maximum number of swine that could be delivered during the: Next 6 months	Next 12 months	Types of expansion clauses in contracts**
Swine or pork market formula with ledger	290,000	580,000	
Swine or pork market formula without ledger	14,830,000	29,700,000	1, 3
Other market formula with ledger	2,610,000	5,220,000	
Other market formula without ledger	3,000,000	6,000,000	
Other purchase arrangement with ledger	275,000	550,000	
Other purchase arrangement without ledger	580,000	1,200,000	2, 3

* An "X" indicates that this type of contract is available to producers as of the date of this report.

** Codes for the types of expansion provisions in use:

(1) Terms that allow for a range in the number of swine to be delivered
(2) Terms that require a greater number of swine to be delivered as the contract continues
(3) Other provisions that provide or allow for expansion in the numbers of swine to be delivered

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Reporting Regions

To provide producers and other interested persons with the most valuable or useful information, the information made available by GIPSA would be presented on a regional basis, as specified in proposed sections 206.2(f) and 206.3(g)(2) of the regulations. Among the factors we would consider in defining a region are: (1) Relevant marketing areas; (2) statutory requirements to maintain confidentiality and protect proprietary business information; and (3) AMS definitions of regions in its reports of swine prices. For example, we would review the AMS regions for which AMS reports prices. If we determine that we could provide more precise estimates by splitting an AMS region into more than one region, then we would evaluate the information to determine if the information could be presented for smaller regions and maintain confidentiality. Alternately, if we determine that releasing information for an AMS region would not maintain confidentiality, then we would aggregate the information into regions that would maintain confidentiality.

In order to ensure confidentiality, information will only be published if it is obtained from no fewer than three packers representing a minimum of three companies, and no packer represents a dominant portion of the region's total. The specific factor used to establish dominance will not be released, to further assure confidentiality by preventing anyone from using knowledge about the factor to reveal information that we will suppress. In any region or set of circumstances that leads us to be concerned about our ability to publish information while maintaining confidentiality, we will consult with USDA statisticians to ensure that confidentiality is maintained.

To further maintain confidentiality, protect proprietary business information, and provide useful information, the regions may change over time. We propose that initially, based on our analysis of swine processing plants in the AMS regions, the regions would be reported as follows:

- Eastern Cornbelt—includes Illinois, Indiana, Ohio, Michigan, and Wisconsin
- Iowa-Minnesota—includes Iowa and Minnesota
- Mid-South—includes Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia
- Western Cornbelt—includes Iowa, Kansas, Minnesota, Missouri, South Dakota, and Nebraska
- Other—includes all states and U.S. territories not included in the other four regions.

Iowa and Minnesota would be reported as a separate region and also be included in the Western Cornbelt region. This would be consistent with AMS reported regions and would allow producers and other interested parties to make direct comparisons between the contract information and prices reported by AMS in the USDA Market News.

We would monitor changes in the swine industry, feedback from producers and other interested parties about the monthly report, and other information to determine if changes in reporting regions need to be considered.

Availability of Contract Library Information and Monthly Reports

Although the basic reporting requirements are mandated by the legislation, we are proposing the method by which swine contract information would be made available to the public. We considered a number of alternatives for making the information available, including publishing printed reports, sending copies on request, making printed reports available at selected locations, and making information available on the GIPSA homepage on the Internet. We determined that publication and mailing of the information in printed reports or making a printed report available at selected locations would be costly, time consuming, and result in the information not being provided to producers in a timely manner. As specified in proposed sections 206.2(g) and 206.3(g)(1) of the regulations, we would make the contract library information and monthly reports available on the Internet on the GIPSA homepage at http://www.usda.gov/gipsa/ and in the GIPSA Regional Office in Des Moines, Iowa at Room 317, 210 Walnut Street, Des Moines, IA 50309. The monthly reports would be available the 1st of each month (2 weeks following the packers' monthly submission). Initially, the contract information and monthly reports would be available 2 months after the final rule becomes effective (30 days after packers would be required to submit example contracts for each of their plants that has the slaughtering capacity specified in the definition of "packer" as specified in proposed section 206.1). Subsequent information on new example contracts offered by packers would be available on a real time basis, to the extent possible (packers must send GIPSA new example contracts on the same day they are offered). The method and time of delivery and the complexity of contract terms would determine how quickly GIPSA could make the information available.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget. The following is an economic analysis of the proposed rule that includes the cost-benefit analysis required by Executive Order 12866. The economic analysis also provides an initial regulatory flexibility analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

These rules are proposed to implement Subtitle B of Title II of the P&S Act which requires packers to report information to the Secretary for each of their swine packing plants that has the slaughtering capacity specified in the definition of "packer." The proposed rule would require the reporting of information on swine marketing contracts by packers for plants have the slaughtering capacity specified in the definition of "packer" measured by annual slaughtering capacity per plant.

Packers would be required to report for their swine processing plants that slaughtered an average of 100,000 head of swine per year during any of the immediately preceding 5 calendar years based on those years in which the plant slaughtered swine. Based on data for 1998, the most recent year for which complete data are available, this would include a total of about 50 plants owned by approximately 29 swine packers. These 50 plants accounted for 6.6 percent of the 757 federally inspected swine slaughter plants in 1998 and accounted for 93 percent of swine slaughtered. Swine packers are not currently required to report information on marketing contracts.

The proposed rules would establish a swine contract library and would require packers operating or utilizing plants of a specified slaughtering capacity to submit monthly reports that would provide information on contract terms and numbers of swine committed to packers under contract. We believe that the proposed regulations would benefit producers, especially small producers. The increase in available information could provide producers with additional leverage in obtaining favorable contract terms with packers,

as well as improve producers' and packers' ability to plan with improved knowledge of the volume of swine already contracted for slaughter.

Summary of Costs

No costs would be imposed on producers as a result of the proposed regulations. Monthly reports and information from the contract library on types of contracts would be available on the GIPSA homepage on the Internet. Producers with Internet access would be able to access the reports at no additional cost beyond their normal Internet costs. We believe that many producer organizations and private news and information services would copy and redistribute these reports at no direct cost to producers as part of the services they already provide to producers.

Packers required to report would face costs associated with submitting contracts for the contract library. The first component of these costs would be the initial cost of compiling and providing to GIPSA a copy of each example contract currently in use, available, or offered by the packer at each plant that has the slaughtering capacity specified in the definition of "packer" as specified in proposed section 206.1. This would include written contracts and descriptions of verbal contracts. The second component would be the cost of providing a copy of each new example contract subsequently offered by the packer. We estimate the hourly cost of these activities would average $20 per hour. Based on our experience reviewing swine packer contracts in the normal course of enforcing the P&S Act, we believe that the time required for a packer to review its contracts, identify an example of each type of contract, and submit those examples as a package would average 6.5 hours per plant for the initial submission, at a cost of $130.00 per plant ($20/hour × 6.5 hours = $130). This estimate includes an initial 4 hours to review the files of contracts and identify examples of existing and offered contracts ($20/hour × 4 hours = $80). Packers would identify which contracts are identical for reporting purposes, as specified in proposed section 206.2(d) of the regulations, in order to determine which contracts need to be sent as examples. The estimate includes an additional 0.25 hours per plant to collect and submit each example to GIPSA. Based on our experience reviewing swine packer contracts, we have determined that some packers would only have one example contract to report for each plant, while other packers would have a variety of example contracts. For this analysis and to provide an upper estimate for the costs associated with the contract library and monthly reports, we estimated that, on average, packers would have 10 example contracts per plant to be submitted to GIPSA for the initial filing ($20/hour × 0.25 hours × 10 examples = $50). The total one-time costs to compile the initial submission of example contracts for all 50 plants would be $6,500 ($130 per plant × 50 plants).

After the initial submission, we estimate an average of about 1.25 hours per year per plant would be required to submit an average of 5 examples of offers of new contracts or changes to previously submitted example contracts, at a cost per plant of $25.00 per year ($20/hour × 1.25 hours = $25). In months when a plant does not offer a new contract or modify a previously submitted example contract, there would be no cost of compliance with contract library reporting requirements. Packers must notify GIPSA on the day that one of its example contracts no longer represents any existing or offered contracts. The costs for this notification are included in the estimate for changes to previously submitted contracts. The total annual recurring cost for all 50 plants for the submission of examples of types of contracts would be $1,250 ($25 per plant × 50 plants).

Packers would also face costs in complying with the monthly reporting requirements. We believe that many packers already maintain the required information electronically for use in their own business planning and strategy. Based on our investigations and reviews of packers, we believe that all packers that are large enough to meet the statutory requirements for reporting already use computers in their business. Therefore, we do not anticipate that the packers would incur any additional costs for computer hardware to implement electronic submissions of monthly reports. For those packers who use computers but do not currently maintain contract information electronically, we estimate that at most 1 hour per plant, at an hourly cost of $50.00, would be required to set up a database or spreadsheet to maintain the necessary information. This estimate is based on our experience with creating spreadsheets and databases that would be similar in type and complexity. The higher hourly wage rate for this activity would be based on the use of personnel with specialized skills necessary to set up spreadsheets or databases. The creation of spreadsheets or databases to maintain the necessary information could be accomplished by in-house computer staff, or by other employees such as accountants or auditors who are responsible for operating the packer's electronic recordkeeping system. The total one-time cost for all 50 plants to set up a database or spreadsheet to maintain information for the monthly report would be $2,500 ($50 per plant × 50 plants) if all 50 plants chose to submit reports electronically.

An additional 2 hours per plant, at the hourly cost of $50.00 per hour for a total one-time cost of $100.00 per plant, would be required for personnel with similar skills in use of electronic recordkeeping systems to extract and format the required information from the packer's electronic information and develop methods for electronic transmission of the completed reports to GIPSA. Upon request, we would provide the necessary information for the interface to our system. Most, if not all, of these packers would be required to use an electronic system to provide information to AMS under mandatory livestock price reporting requirements in the AMA (7 U.S.C. 1636(g)). Packers that do not use electronic data transmission would not incur this initial set-up cost, but would not gain the advantage of potential savings from electronic recordkeeping and reporting as described below. The total one-time cost for all 50 plants to extract and format information and develop methods for electronic transmission for the monthly report would be $5,000 ($100 per plant × 50 plants) if all 50 plants chose to submit reports electronically.

Once a recordkeeping and reporting system was established, additional time would be required to enter data into the database or spreadsheet each month. Packers who choose not to use an electronic system for maintaining and compiling data required for the monthly reports would have to manually compile the data on paper forms each month. The total time required for either method would depend on the number of contracts in effect. The initial monthly report may take somewhat longer, but subsequent reports would be expected to require less time.

Based on our experience in working with similar documents and data entry processes, we estimate that it should take an average of 2 hours per month per plant to manually compile and report the figures needed for the monthly reporting provision. We estimate the cost per hour of this activity would average $20.00 per hour, for a total monthly cost per plant of $40.00 ($20/hour × 2 hours = $40). Packers who use an electronic system to compile reports would face lower

monthly compliance costs than those who do not use an electronic system. We estimate that packers who utilize electronic systems would take an average of 1 hour per month per plant at a total cost per plant of $20.00 to compile and report the monthly estimates. The total annual recurring cost for a plant to compile and submit the monthly report would be $480 ($40 per month × 12 months) if the plant chose to submit reports manually or $240 ($20 per month × 12 months) if the plant chose to submit reports electronically. The total annual recurring cost for all 50 plants to compile and submit the monthly report would be $24,000 ($480 per plant × 50 plants) if all 50 plants chose to submit reports manually or $12,000 ($240 per plant × 50 plants) if all 50 plants chose to submit reports electronically.

The following table summarizes the estimated compliance costs for packers required to submit example contracts and monthly contract information for plants that are subject to the regulations in proposed 9 CFR Part 206. As shown in the table, total first year costs for all 50 plants to comply with the requirements of the contract library and monthly reports would be $31,750 if all 50 plants chose to submit reports manually or $27,250 if all 50 plants chose to submit reports electronically. The total first year costs include the start-up costs, therefore, the annual recurring costs would be lower and are estimated to be $25,250 if all 50 plants chose to submit reports manually or $13,250 if all 50 plants chose to submit reports electronically.

	Costs per plant, manual	Costs per plant, electronic	Total costs if all 50 plants use manual methods [1]	Total costs if all 50 plants use electronic methods [1]
START-UP COSTS				
Contract Library:				
Review contracts, identify examples of each type (4 hours × $20.00/hr)	$80.00	[2] $80.00	$4,000.00	$4,000.00
Collect and submit examples (10 examples × 0.25 hr. × $20.00 per hour)	50.00	[2] 50.00	2,500.00	2,500.00
Monthly Report:				
Set up database or spreadsheet (1 hour × $50.00)	N/A	50.00	N/A	2,500.00
Development of transmission methods (2 hours × $50.00)	N/A	100.00	N/A	5,000.00
TOTAL START-UP COSTS	130.00	280.00	6,500.00	14,000.00
ANNUAL RECURRING COSTS				
Contract Library:				
Collect and submit examples of each type of contract (5 examples × 0.25 hr. × $20.00 per hour)	25.00	25.00	1,250.00	1,250.00
Monthly Report:				
Enter data into database or spreadsheet, or tabulate on paper, and compile totals				
(electronic: 1 hour per month × 12 × $20.00)	N/A	240.00	N/A	12,000.00
(manual: 2 hours per month × 12 × $20.00)	480.00	N/A	24,000.00	N/A
TOTAL ANNUAL RECURRING COSTS	505.00	265.00	25,250.00	13,250.00
TOTAL 1st YEAR COST (Start-up costs plus annual recurring costs)	635.00	545.00	31,750.00	27,250.00

[1] Although we believe it is likely that most plants will use electronic methods, we do not have a basis for estimating the actual number of packers that will choose to use electronic versus manual methods. Thus, estimates are shown for the alternatives of all manual submissions versus all electronic submissions to provide a range of the likely total costs to packers.

[2] We are not assuming any electronic submission of contracts for purposes of this analysis. Although facsimile transmission likely will be used by many packers, facsimile is not considered an electronic method according to definitions under the Paperwork Reduction Act.

GIPSA would incur costs of operating the Swine Packer Marketing Contract Library, analyzing the monthly reports submitted by packers, ensuring that packers are in compliance, and making the information available at the Des Moines office and on the GIPSA homepage. We estimate that GIPSA would incur total costs of $400,000 per year for all activities associated with implementing the proposed regulations. We would monitor and review contracts submitted for the contract library and monthly reports filed by packers to assure completeness, consistency, and accuracy. In addition, we would conduct ongoing analyses of the data and information obtained from packers, and would explore ways to increase the usefulness of the data and information. Our projected costs include communication costs, travel expense for plant visits to monitor compliance with the P&S Act and regulations, costs for office supplies, computer hardware and software acquisition and maintenance, and an additional four full-time equivalent staff years. The increased staff years would be used for the activities outlined below, described in terms of individual staff year equivalents.

We anticipate that our costs for providing assistance to packers and maintaining the contract library would decrease over time. As packers become familiar with the regulations, they would need less assistance from us. Once the analysis of the initial submission of contracts is complete, there would be fewer contracts coming in for analysis.

One staff-year equivalent would be required to deal primarily with activities associated with the contract library. These activities would include reviewing and analyzing contracts to ensure consistency in the way in which packers categorize example contracts into types of contracts, distilling information from the contracts for the GIPSA homepage on the Internet, and filing and scanning contracts for recordkeeping. This staff-year equivalent would include the staffing hours required to answer questions from packers to help them comply with

statutory and regulatory requirements, and from users of the GIPSA homepage on the Internet. Finally, this staff-year equivalent would include contract library compliance issues such as spot investigations, plant visits, and correspondence with packers.

A second staff-year equivalent would be required to deal primarily with activities associated with the monthly reports. These activities would include reviewing and analyzing monthly reports to ensure that all reports were complete and filed in a timely manner, entering data from the reports into a GIPSA system, verifying the data, and aggregating the data into the reports that we would make available. This staff-year equivalent would include the staffing hours required to respond to questions from packers to help them comply with statutory and regulatory requirements and from users of the GIPSA homepage on the Internet to answer any questions they may have concerning the public monthly reports that would be made available on the GIPSA homepage on the Internet. Finally, this staff-year equivalent would include monthly report compliance issues such as spot investigations, plant visits, and correspondence with packers.

A third staff-year equivalent would be required to develop and operate automated information systems for the contract library and the monthly report. For the contract library, this would entail continually updating and maintaining the contract library homepage on the Internet with information provided by the staff person responsible for reviewing contracts and determining what information would be included in the library and providing assistance and guidance to packers for electronic submission. This staff-year equivalent would include the staffing hours required to support the automated information systems used for aggregating and otherwise processing the data included in the monthly reports filed by packers, and to post the public report on our homepage on the Internet.

The final staff-year equivalent would involve a composite group of activities that would be performed by various people. This staff-year equivalent would include the staffing hours required to manage and oversee the operation of the contract library, including reviewing data and information to be released to see if releasing such data and information is consistent with USDA information release policies, and managing compliance issues. Additional activities would involve statistical analysis of the data on the monthly reports to determine ways to improve the quality of the reporting process and the usefulness of the information released to the public.

Summary of Benefits

The primary economic benefit of the contract library would be to alleviate some of the current imbalance in information between producers and packers by increasing the amount of information available to producers and to provide the potential to improve overall production planning and marketing efficiency. Many producers report that they cannot obtain the information needed to compare contracts available from different packers, giving packers an advantage over producers in negotiations. Producers may have very limited information, especially about contracts and contracting practices, since producers are parties to a fewer number of contracts and have fewer resources for searching out this information than do packers. Based on GIPSA's contacts with producers, we believe that most producers currently do not search out contract terms among alternative packers. Rather, they tend to contract with and deliver their hogs to a single packer. Producers have indicated that they do not have enough knowledge about potential alternative contract terms available to them to encourage them to search out more favorable terms.

This proposed rule would make information about contracts readily and easily available from a single source, specifically, the variety and types of contracts available in the marketplace, as well as the number of swine committed under contract by region. Availability of information from the contract library and monthly reports would serve to lower the search costs for producers and would enable producers to be more informed before entering the marketplace.

This increased information would be beneficial to producers in making production plans and determining how to market swine. The increased information about types of contracts and contract terms would enable producers, knowing that specific contract terms are available in the marketplace, to seek the particular terms that a producer considered most favorable. For example, different packers often have different requirements for swine with given carcass characteristics, and the packers' premiums and discounts reflect their unique requirements.[4] The information in the contract library will make producers aware of contract terms that better match the characteristics of the swine they produce. Although the monthly report would not identify which packers are offering specific contract terms, producers would know that specific terms are offered in identified regions. The information would encourage them to contact packers to find the one offering the most favorable terms. Under the current system, producers tend to be unaware when more favorable terms exist, and do not conduct such searches.

Additionally, the monthly report would provide producers with information on the number of contracted swine by region for the upcoming 6- and 12-month periods. Producers could use this information, in combination with data such as current inventories of swine on feed from the National Agricultural Statistics Service and projections of slaughter from land grant college extension services and other sources, to estimate the percentage of the region's swine slaughter requirements for the next 6 and 12 months that are being met by contracted swine. This would help producers to determine how many sows to breed, whether to search out packers in regions with lower volumes of swine already contracted, and to make other decisions related to the production and marketing of their swine. For example, knowledge of the volume of swine already contracted for delivery 12 months into the future would better enable producers to adjust their production plans to avoid situations such as occurred during a prolonged period in late 1998. During that period, extremely large supplies of swine for slaughter were out of balance with aggregate industry slaughter capacity and producers suffered losses in the billions of dollars.

By lowering the cost of acquiring market information and increasing the amount of available information, information contained in the contract library and available from the monthly report would alleviate much of the current imbalance in information available to producers relative to packers. The benefits are difficult, if not impossible, to quantify, but available evidence indicates the benefits should be substantial. We believe that benefits to producers, from the availability of contract terms and packers' estimates of future deliveries, would include better

[4] For example, one analysis found that net prices paid by different packers for the same quality of hogs varied by up to $2.00 per hundredweight. ("Factors That Influence Prices Producers Receive for Hogs: Statistical Analysis of Kill Sheet and Survey Data," John D. Lawrence, Staff Paper No. 279, Iowa State University. March 1996.)

planning for their marketing decisions and could result in contracts with better terms for producers, especially small producers.

We envision that the primary means of access to information from the contract library and monthly report would be through the GIPSA homepage on the Internet. The information would also be available in our Regional Office in Des Moines, Iowa. We believe that many producers have access to the Internet. Those who do not could get access through USDA agricultural extension offices or public libraries with Internet service. Therefore this method of providing the information should make it available to the widest possible audience in the most efficient way. We believe that many producer organizations and private news and information services would copy and redistribute these reports at no direct cost to producers as part of the services they already provide to producers.

Although packers would bear the compliance costs of the proposed regulations, packers are not the primary beneficiaries of the contract library. The chief benefit to the packers would be from improved knowledge about aggregate supply based on information provided in the monthly reports of aggregate future supplies of swine contracted for slaughter and knowledge of contract terms being offered by other packers.

In conclusion, the benefits to producers and other interested persons are not quantifiable and, therefore, difficult to compare to the costs that packers and GIPSA would incur to implement the contract library and monthly report requirements of the amendments to the P&S Act. We believe the contract library and monthly reports would provide useful information to GIPSA, producers, and other interested persons and the benefits would outweigh the costs. The total annual cost for GIPSA to implement the contract library and monthly reports would be $400,000. Although the total first-year costs would be higher for plants choosing to implement electronic methods, annual recurring costs thereafter would be substantially lower at an average of $265 per plant versus the $505 per plant for plants choosing to use manual methods. We believe all plants have the capability to use electronic methods. However, we do not have an estimate for how many plants will choose to use electronic versus manual methods. Thus, for purposes of comparing costs and benefits, we are conservatively using the highest cost, which is based on all plants using manual methods to submit monthly reports. Using this conservative estimate, the total first-year cost to the industry would be $31,750 and annual recurring costs thereafter would be $25,250. We are requesting comments on these estimates and on the likelihood that respondents will use electronic methods. Additionally, the benefits to the producer would be an increase in the knowledge about supply and contract terms that could result in better marketing decisions and more favorable contract terms. Because these benefits are difficult, if not impossible, to quantify, we are requesting comments to provide additional information on the benefits of this proposed regulation and the quantification of those benefits.

Effects on Small Entities

The Small Business Administration (SBA) classifies producers' swine production enterprises as small businesses if they have annual sales of $500,000 or less. There were approximately 92,000 producers that would be classified as small businesses by this criteria, or 90 percent of all producers reporting sales of swine in the 1997 Census of Agriculture. The proposed rule would not impose any reporting requirement or other burden on producers of any size. We believe the proposed rule would provide significant benefits for all producers, as discussed in the section on Summary of Benefits above, and especially to small producers.

According to the SBA size standard, a company that owns and operates a packing plant, including a swine processing plant, would be classified as a small business if the company has less than 500 employees in total. It is common in the red meat industry for larger companies to own several plants. A packer that owns and operates one or more plants would be considered as a small business under the SBA definition only if the packer, at all plants combined, had fewer than 500 employees.

A total of about 29 pork packing companies (packers) owning 50 plants that have the slaughtering capacity specified in the definition of packer in proposed section 206.1 would be required to report under the proposed regulation. The 50 plants for which packers would be required to report represent only 6.6 percent of all swine processing plants that slaughter swine in the United States. The remaining 93.4 percent of swine processing plants would not have the slaughtering capacity required for reporting and, therefore, would not be required to report. Based on the SBA size standard, approximately 15, or about 52 percent of the packers that own plants that would be required to report, would be considered small businesses. These small packers would bear some costs of compliance with the proposed regulation. The costs, as described above in Summary of Costs, would arise from the reporting and recordkeeping requirements for the small packers that are required to report. These are the same requirements that would be imposed on larger packers that have the slaughtering capacity required for reporting. However, we believe the burden of these requirements would be less on the packers classified as small businesses, as explained below under Reporting Burden on Small Business.

Projected Reporting Burden on Small Entities

The proposed rule would require packers to report two types of information regarding contracts for purchase of swine for slaughter. The first type would be a copy of each example contract currently in use, available, or offered by packers at each plant required to report under proposed section 206.1, and would not require the completion of any type of reporting form. A copy of an example contract would only be submitted once for each plant. Based on prior contacts with packers by GIPSA personnel during the normal course of enforcing the P&S Act, we believe that small packers would have a relatively small number of example contracts that would have to be submitted. Packers would submit their example contracts by mail, facsimile, or another method that is convenient for them and approved by GIPSA. We would use the information in these contracts to prepare a report for public release that would describe the types of contracts and contract terms existing, offered, and available, but would not identify individual packers of any size, or release copies of actual individual contracts used by any packer. We would make the report with the information from the contract library available on the Internet and at our Des Moines Regional Office.

The second type of information reported by packers would consist of a monthly report of the number of swine committed for delivery under each type of contract. The form for the monthly report would consist of up to 189 separate fields of information, including report date, packer, and plant identification information (9 fields); swine delivery estimates for 6 categories of types of contracts for 12 months (up to 144 fields for committed and maximum estimates); an X for any currently offered contracts under a

category of contract type (up to 6 fields); codes for the types of expansion provisions in existing contracts to increase swine deliveries to the maximum estimate (up to 6 fields); and the dates for which the estimates are provided (24 fields). A packer would have to fill out 189 fields of information for a plant that had one or more contracts under each of the 6 types of contracts. Packers would report this information once each month for each plant required to report under the proposed regulations. If 189 fields of information were required per submission, each plant would report 189 pieces of information each month. However, few if any packers would be expected to have contracts of such variety as to be required to complete all fields on any given monthly report. We expect that the average monthly report of packers of any size would require entry of data into 61 to 87 fields. Packers would compile and aggregate data from individual contracts to enter into these fields. Small packers that meet the minimum slaughtering capacity required for reporting would be expected to have a smaller number of contracts from which to compile data. Therefore, the total reporting burden for smaller packers should be less than that for the larger packers that are required to report.

We would encourage packers to utilize electronic data transmission to submit the required information to GIPSA. We would provide packers the necessary information on procedures to submit the data to GIPSA electronically. We expect that packers would use a variety of methods to provide the data to GIPSA. For electronic data transmission, the methods would vary based on technology. Therefore, we would not specify a single transmission method. Packers could mail or otherwise deliver a computer diskette to GIPSA or e-mail the data. In addition, we are developing a system to allow packers to submit their data via the Internet through the GIPSA homepage.

Those small businesses that choose not to use electronic submission methods for their contract information and monthly reports would send the information via facsimile or mail to GIPSA using the proposed standardized forms. However, they would have to meet the submission deadlines regardless of the method used for submission.

Projected Recordkeeping Burden on Small Entities

Each packer that would be required to report information would be required to maintain such records as are necessary to compile the information reported and verify its accuracy. Current P&S Act recordkeeping requirements are set out in 9 CFR 201. The proposed rule would not require maintenance of records beyond those that packers are already required to maintain. Therefore, the rule would not create new, unduly burdensome recordkeeping requirements. Professional skills required for recordkeeping under the proposed rule would not be different than those already employed by the reporting entities. However, packers may need to extract and format the required information from their records for their submissions to GIPSA. We believe the skills needed to maintain such records are already in place in those small businesses affected by the proposed rule.

Alternatives

We considered alternative methods by which the objectives of the regulations could be accomplished. The proposed regulations, as mandated by the Livestock Mandatory Reporting Act of 1999, require swine packing plants that slaughter a specified number of swine each year to provide certain information to the Secretary. There were few feasible alternatives possible with regard to obtaining the required information.

The contract library requirement for filing types of contracts in use could be accomplished by requiring that packers file copies of all contracts, not just examples. However, we believe this would result in an overwhelming and unnecessary paperwork burden for both packers and GIPSA. It would require all packers required to report to mail multiple copies of the same example contract. It would also require a significant increase in expense to the government for the time required to review and classify all the contracts received.

The monthly report requirement could be accomplished by GIPSA compiling all data necessary for the monthly report to determine each individual packer's projected deliveries of swine for slaughter for the following 6- and 12-month periods. This alternative would require that we also implement the first alternative discussed above (*i.e.*, require packers to file all contracts), for GIPSA to have the necessary details to compile the data each month. In addition to the cost to the government of collecting all contracts, it would add significant additional costs to the government to tabulate data each month from all contracts submitted by packers.

We also considered the option of requiring electronic submission of the information required to be published in the monthly report. However, in developing these proposed regulations, we decided that the reporting objectives could be accomplished by allowing packers to report the required information by facsimile or mail if they choose not to use electronic submission. Although we would encourage packers to utilize electronic data transmission, and we would provide to packers the necessary information on procedures to submit data to GIPSA electronically, we expect that packers would use a variety of methods to provide the data to GIPSA. For electronic data transmission, the methods would vary based on technology; to submit data electronically, packers could include mail or otherwise deliver the electronic data on a computer diskette or e-mail the data. In addition, we are implementing a system to allow packers to submit data via the Internet through the GIPSA homepage. Therefore, we would not specify a single transmission option.

In conclusion, as shown above, it is difficult to quantify all of the economic impacts on small entities based on the alternative submission methods that small packers may choose and the anticipated benefits, especially for small producers. Small packers would incur the costs of complying with these proposed regulations; however, only 15 small packers, representing a small percentage of all small packers in the United States would be required to comply with these regulations based on the slaughtering capacity of their plants. We believe that all of the approximately 92,000 small producers would accrue benefits at little or no cost. Therefore, we believe that the balance of the economic effects for small entities would be positive.

Executive Order 12988

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This proposed rule would not pre-empt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted before this proposal can be challenged in court.

Paperwork Reduction Act

The proposed rule contains recordkeeping and submission requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA). In

accordance with section 3507(d) of the PRA, the information collection and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). In accordance with 5 CFR 1320, the reporting and recordkeeping requirements and an estimate of the annual burden on packers required to report information under the proposed rules are described below.

Title: Swine Packer Marketing Contracts.

OMB Number: New Collection.

Type of Request: New.

Abstract: The information collection and recordkeeping requirements in these regulations are essential to establishing and implementing a mandatory library of swine marketing contracts and a mandatory program of reporting the number of swine contracted for delivery. Based on information available, we have determined that under the proposed rule there are 29 packers that would be required to file contracts and report certain information on deliveries for a total of 50 plants that they operate or at which they have swine slaughtered.

Packers would be required to report information for individual plants even in instances when a given company owned or used more than one plant. Estimates below on the information collection burden are based on time and cost requirements at the plant level, so packers that report for more than one plant would bear a cost that would be a multiple of the per-plant estimates.

We believe the packers that are required to report have similar recordkeeping systems and business operating practices and conduct their operations in a similar manner. Based on past reviews of packers' use of marketing contracts and the records maintained by those packers, we believe that most information to be submitted under the proposed rule could be collected from existing data and recordkeeping systems and that these data and systems can be adapted to satisfy the proposed rule. We recognize that some information, such as the contract terms for verbal contracts, may not be kept in the manner in which we are requesting. Therefore, packers would need to reduce the essential terms of verbal contracts to writing when the proposed rule would require them to be submitted as example contracts as described earlier in this document.

Under the proposed rule, the first information collection requirement would consist of submitting example contracts. Initially, a packer would submit example contracts currently in effect or available for each swine processing plant that would be subject to the regulations. Subsequently, a packer would submit example contracts for any offered, new, or amended contracts that varied from previously submitted contracts in the base price determination, the application of a ledger or accrual account, carcass merit premium and discount schedules (including the determination of the lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied), or the use and amount of noncarcass merit premiums or discounts. The initial submission of example contracts would require more time than subsequent filings of new contracts or changes, as packers would initially need to review all their contracts to identify the unique types that would need to be represented by an example submitted to GIPSA. Thereafter, subsequent filings should require a minimal amount of effort on the part of packers, as only example contracts that represented a new type would need to be filed with GIPSA.

The second information collection requirement would be for a monthly filing of summary information in the standard format of the proposed new PSP Form 341, Packer/Plant Report, Estimates of Swine Committed to Be Delivered Under Contract (see the sample shown in the Monthly Report section of this document). The proposed new form for the monthly filing would be simple and brief. Packers would be required to compile certain data in order to complete the form, but these data should be available in the packers' existing record systems. Electronic submission would be encouraged, and we would provide the necessary information on procedures to submit data to GIPSA electronically. Packers unable or choosing not to use electronic submission could submit the report on the proposed form using facsimile or mail.

The estimates of time requirements used for the burden estimates below were developed in consultation with GIPSA personnel knowledgeable of the industry's recordkeeping practices. The estimates also reflect our experience in assembling large amounts of data during the course of numerous investigations involving use of data collected from the industry. Estimates of time requirements and hourly wage costs for developing electronic recordkeeping and reporting systems are based on our experience in developing similar systems, in consultation with our automated information systems staff.

(1) Submission of Contracts (No Form Involved)

Estimate of Burden: Reporting burden for submission of contracts is estimated to include 4 hours per plant for an initial review of all contracts to categorize them into types and identify unique examples, plus an additional 0.25 hours per unique contract identified during the initial review to submit an example of that contract. After the initial filing, the reporting burden is estimated to include 0.25 hours per plant to submit an example of each new or amended contract.

Respondents: Packers required to report information for the swine contract library.

Estimated Number of Respondents: 29 packers (total of 50 plants).

Estimated Number of Responses per Plant: Number of responses per plant would vary. Some plants would have no contracts, while others could have up to 50 contracts. We estimate an average of 10 example contracts per plant for the initial filing of examples of existing types of contracts, and an average of 5 example contracts per plant per year for offered contracts and amended existing or available contracts.

Estimated Total Annual Burden on Respondents: Initial filing: 325 total hours for the initial filing of examples of existing contracts by all plants combined. Calculated as follows:

(4 hours per plant for initial review) × (50 plants) = 200 hours for initial review;

(.25 hours per contract) × (10 example contracts per plant) × (50 plants) = 125 hours;

(200 hours) + (125 hours) = 325 total hours.

Thereafter, 62.5 total hours annually for all subsequent filing of examples of offered or amended existing or available contracts by all plants combined, based on an average of 5 offered or amended existing or available contracts annually. Calculated as follows:

(.25 hours per contract) × (5 example contracts per plant) × (50 plants) = 62.5 hours

Total Cost: Initial filing $6,500.00 for all plants combined. Calculated as follows:

(325 hours) × ($20.00 per hour) = $6,500.00

Thereafter, $1,250.00 annually for all plants combined for submission of subsequent filings. Calculated as follows:

(62.5 hours) × ($20.00 per hour) = $1,250.00

(2) Submission of Monthly Swine Marketing Contract Report (Form 341(draft))

Estimate of Burden: The reporting burden for compiling data, completing and submitting the form is estimated to average 2.0 hours per manually prepared and submitted (via mail or facsimile) report and 1.0 hour per electronically prepared and submitted report. There would be an estimated additional one-time set up burden of 1 hour at a cost of $50.00 per plant for a packer that chose to create a spreadsheet or database for recordkeeping and preparation of monthly estimates. There would be an estimated additional 2 hour burden at a cost of $50.00 per hour or $100.00 per plant total for a packer to develop procedures to extract and format the required information and to develop an interface between the packer's electronic recordkeeping system and GISPA's system. The hourly rate for development of electronic tools is assumed to be higher due to the need to use personnel with specialized computer skills.

Respondents: Packers required to report information for the swine contract library.

Estimated Number of Respondents: 29 packers (total of 50 plants).

Estimated Number of Responses per Plant: 12 (1 per month for 12 months).

Estimated Total Annual Burden on Respondents: 1,200 hours for all plants combined if all plants used manual compiling, preparation, and submission. Calculated as follows:

(2.0 hours per response) × (50 plants) × (12 responses per plant) = 1,200 hours;

600 hours for all plants combined if all plants use electronic compiling, preparation, and submission. Calculated as follows:

(1.0 hour per response) × (50 plants) × (12 responses per plant) = 600 hours.

Total Cost: $24,000 annually for all plants combined if all use manual submission. Calculated as follows:

(1200 hours) × ($20.00 per hour) = $24,000.00

$12,000 annually for all plants combined if all were to completely utilize electronic preparation and submission. Calculated as follows:

(600 hours) × ($20.00 per hour) = $12,000.00

Additional $7,500 one-time set-up cost if all plants were to completely utilize electronic systems for preparation and submission. Calculated as follows:

(1 hour build spreadsheet/database) + (2 hours develop electronic interface) = 3 hours

(3 hours total development) × ($50.00 per hour) × (50 plants) = $7,500.00

We believe that most entities would choose to use electronic recordkeeping and reporting methods. Thus, the cost burden to respondents would be at the lower end of the range provided. We estimate the range of costs in the first year for a packer reporting for one plant would be $545 using electronic submission and $635 for manual submission. In subsequent years, we estimate the range of costs would be $265 using electronic submission and $505 for manual submission.

The PRA also requires GIPSA to measure the recordkeeping burden imposed by this proposed rule. Under the P&S Act and its existing regulations, each packer is required to maintain and make available upon request such records as are necessary to verify information on all transactions between the packer and producers from whom the packer obtains swine for slaughter. Records that packers are required to maintain under existing regulations would meet the requirements for verifying the accuracy of information required to be reported under the proposed rule. These records include original contracts, agreements, receipts, schedules, and other records associated with any transaction related to the purchase, pricing, and delivery of swine for slaughter under the terms of marketing contracts. We believe that additional annual costs of maintaining records would be nominal since packers are required to store and maintain such records as a matter of normal business practice and in conformity with existing regulations.

We are soliciting comments from all interested parties concerning the information collection and recordkeeping requirements contained in the proposed rule. Comments are invited to:

(1) Evaluate whether the proposed collection of information is necessary and would be useful;

(2) Evaluate the accuracy of the GIPSA estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(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 would be required to respond (such as 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).

Please send your written comment regarding information collection and recordkeeping requirements to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for GIPSA, Washington, DC 20503. Please state that your comment refers to Swine Packer Marketing Contracts (PSA–2000–01–a), RIN 0580–AA71. Also, please send one copy of your comment regarding information collection and recordkeeping requirements to each of the following: (1) Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Washington, DC 20250–3641; E-mail: comments@gipsadc.usda.gov; and (2) Clearance Officer, OCIO, USDA, Room 404–W, 1400 Independence Avenue, SW, Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule. All comments will become a matter of public record.

List of Subjects in 9 CFR Part 206

Swine, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, GIPSA proposes to amend 9 CFR Chapter II as follows:

1. Add Part 206 to read as follows:

PART 206—SWINE PACKER MARKETING CONTRACTS

Sec.

Authority: 7 U.S.C. 198, 198a, and 198b; 7 CFR 2.22 and 2.81.

§ 206.1 Definitions.

The definitions in this section apply to the regulations in this part. The definitions in this section do not apply to other regulations issued under the P&S Act or to the P&S Act as a whole.

Accrual account.(Synonymous with "ledger," as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects

producer and packer rights and obligations under the contract.

*Base price.*The price paid for swine before the application of any premiums or discounts, expressed in dollars per unit.

Contract. Any agreement, whether written or verbal, between a packer and a producer for the purchase of swine for slaughter, except a negotiated purchase (as defined in this section).

*Formula price.*A price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

Ledger. (Synonymous with "accrual account," as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

Negotiated purchase. A purchase, commonly known as a cash or spot market purchase, of swine by a packer from a producer under which:

(1) The buyer-seller interaction that results in the transaction and the agreement on actual base price occur on the same day; and

(2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the swine are committed to the packer.

Noncarcass merit premium or discount. An increase or decrease in the price for the purchase of swine offered by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.

Other market formula purchase. A purchase of swine by a packer in which the pricing determination is a formula price based on any market other than the markets for swine, pork, or a pork product. The pricing determination includes, but is not limited to:

(1) A price formula based on one or more futures or options contracts;

(2) A price formula based on one or more feedstuff markets, such as the market for corn or soybeans; or

(3) A base price determination using more than one market as its base where at least one of those markets would be defined as an "other market formula purchase."

Other purchase arrangement. A purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase, and does not involve packer-owned swine.

Packer. Any person or firm engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part would only apply to a packer slaughtering swine at a federally inspected swine processing plant that meets either of the following conditions:

(1) A swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine; or

(2) Any swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years that has the capacity to slaughter at least 100,000 swine per year, based on plant capacity information.

Producer. Any person engaged, either directly or through an intermediary, in the business of selling swine to a packer for slaughter (including the sale of swine from a packer to another packer).

Swine. A porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

Swine or pork market formula purchase. A purchase of swine by a packer in which the pricing determination is a formula price based on a market for swine, pork, or a pork product, other than a futures contract or option contract for swine, pork, or a pork product.

Type of contract. The classification of contracts or risk management agreements for the purchase of swine committed to a packer by the determination of the base price and the presence or absence of an accrual account or ledger (as defined in this section). The type of contract categories are:

(1) Swine or pork market formula purchases with a ledger,

(2) Swine or pork market formula purchases without a ledger,

(3) Other market formula purchases with a ledger,

(4) Other market formula purchases without a ledger,

(5) Other purchase arrangements with a ledger, and

(6) Other purchase arrangements without a ledger.

§ 206.2 Swine packer marketing contract library.

(a) *Do I need to provide swine packer marketing contract information?* Packers, as defined in § 206.1, must provide information for the swine processing plants that they operate or at which they have swine slaughtered that has the slaughtering capacity specified in the definition of packer in § 206.1.

(b) *What existing or available contracts do I need to provide and when are they due?* Each packer must send and the Grain Inspection, Packers and Stockyards Administration (GIPSA) must receive an example of each contract it currently has with a producer or producers or that is currently available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1. This initial submission of example contracts is due to GIPSA on the first business day of the month following the determination that the plant has the slaughtering capacity specified in the definition of packer in § 206.1.

(c) *What offered contracts do I need to provide and when are they due?* After the initial submission, each packer must send GIPSA an example of each new contract it offers to a producer or producers on the day the contract is offered at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1.

(d) *What criteria do I use to select example contracts?* For purposes of distinguishing among contracts to determine which contracts may be represented by a single example, contracts will be considered to be the same if they are identical with respect to all of the following four criteria:

(1) Base price or determination of base price;

(2) Application of a ledger or accrual account (including the terms and conditions of the ledger or accrual account provision);

(3) Carcass merit premium and discount schedules (including the determination of the lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied), and

(4) Use and amount of noncarcass merit premiums and discounts.

(e) *Where do I send my contracts?* Packers must send the example contracts required in paragraphs (b) and (c) of this section to the GIPSA Regional

Office at Room 317, 210 Walnut Street, Des Moines, IA 50309.

(f) *What information from the swine packer marketing contract library will be made available to the public?* GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will summarize the information by region and type of contract as defined in § 206.1. Geographic regions will be defined in such a manner as to avoid divulging data on individual firms' operations and the parties to contracts will not be identified.

(g) *How can I review the swine packer marketing contract library?* The information will be available on the Internet on the GIPSA homepage (http://www.usda.gov/gipsa/) and in the GIPSA Regional Office in Des Moines, Iowa at Room 317, 210 Walnut Street, Des Moines, IA 50309. The information will be updated as GIPSA receives information and/or examples of new contracts from packers.

(h) *What do I need to do when a previously submitted example contract is no longer a valid example due to contract changes, expiration, or withdrawal?* Packers must submit a new example contract when contract changes result in changes to the criteria specified in paragraph (d) of this section. Packers must notify GIPSA that the new example contract replaces the previously submitted example contract. Packers must notify GIPSA on the day that one of its example contracts no longer represents any existing or offered contracts. This notification must specify the reason, for example, changes to a contract, expiration of an existing contract, or withdrawal of an offered contract.

§ 206.3 Monthly report.

(a) *Do I need to provide swine packer marketing contract monthly reports?* Packers, as defined in § 206.1, must provide information for each swine processing plant that they operate or at which they have swine slaughtered that has the slaughtering capacity specified in the definition of packer.

(b) *What information do I need to provide and when is it due?* Each packer must send a separate monthly report for each plant that has the slaughtering capacity specified in the definition of packer in § 206.1. Packers must deliver the report to the GIPSA Regional Office in Des Moines, Iowa by the close of business on the 15th of each month. The GIPSA Regional Office closes at 4:30 p.m. Central Time. If the 15th day of a month falls on a Saturday, Sunday, or federal holiday, the monthly report is due no later than the close of the next business day following the 15th.

(c) *How do I make a monthly report?* The monthly report that packers file must be reported on PSP Form 341 and must provide the following information:

(1) *Existing contracts.* The types of contracts the packer currently is using for the purchase of swine for slaughter at each plant. Each packer must report types of contracts in use even if those types are not currently being offered for renewal or to additional producers. Existing contracts will be shown on the report by providing monthly estimates of the number of swine committed to be delivered under the contracts in each category of the types of contracts as defined in § 206.1.

(2) *Available contracts.* The types of contracts the packer is currently offering to producers, or is making available for renewal to currently contracted producers, for purchase of swine for slaughter at each plant. On the monthly report, a packer will indicate each type of contract, as defined in § 206.1, that the packer is currently offering.

(3) *Estimates of committed swine.* The packer's estimate of the total number of swine committed under contract for delivery to each plant for slaughter within each of the following 12 calendar months beginning with the 1st of the month immediately following the due date of the report. The estimate of total swine committed will be reported by type of contract as defined in § 206.1.

(4) *Expansion provisions.* Any conditions or circumstances specified by provisions in any existing contracts that could result in expansion in the estimates specified in paragraph (c)(3) of this section. Each packer will identify the expansion provisions in the monthly report by listing a code for the following conditions:

(i) Contract terms that allow for a range of the number of swine to be delivered;

(ii) Contract terms that require a greater number of swine to be delivered as the contract continues;

(iii) Other provisions that provide for expansion in the numbers of swine to be delivered.

(5) *Maximum estimates of swine.* The packer's estimate of the maximum total number of swine that potentially could be delivered to each plant within each of the following 12 calendar months, if any or all the types of expansion provisions identified in accordance with the requirement in paragraph (c)(4) of this section are executed. The estimate of maximum potential deliveries must be reported by type of contract as defined in § 206.1.

(d) *What if a type of contract does not specify the number of head committed?* To meet the requirements of paragraphs (c)(3) and (c)(5) of this section, the packer must estimate expected and potential deliveries based on the best information available to the packer. Such information might include, for example, the producer's current and projected swine inventories and planned production.

(e) *When do I change previously reported estimates?* Regardless of any estimates for a given future month that may have been previously reported, current estimates of deliveries reported as required by paragraphs (c)(3) and (c)(5) of this section must be based on the most accurate information available at the time each report is prepared. Packers must update or change any previously reported estimates for any month(s) included on the current report to reflect accurate information on producers' plans, initiation of new contracts, or any other circumstances that cause changes in expected future deliveries.

(f) *Where and how do I send my monthly contract information?* Packers may submit their monthly reports by either of the following two methods:

(1) *Electronic report.* Information reported under this section may be reported by electronic means, to the maximum extent practicable. Electronic submission may be e-mail or by any other form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit information electronically, contact GIPSA through the Internet on the GIPSA homepage (http://www.usda.gov/gipsa/) or at the GIPSA Regional Office at Room 317, 210 Walnut Street, Des Moines, IA 50309.

(2) *Printed report.* Packers may deliver their printed monthly report to the GIPSA Regional Office at Room 317, 210 Walnut Street, Des Moines, IA 50309.

(g) *What information from monthly reports will be made available to the public and when and how will the information be made available to the public?*

(1) *Availability.* GIPSA will provide a monthly report of contract types and estimated deliveries as reported by packers in accordance with this section, for public release on the 1st business day of each month. The monthly reports will be available on the Internet on the GIPSA homepage (http://www.usda.gov/gipsa/) and in the GIPSA Regional Office at Room 317, 210 Walnut Street, Des Moines, IA 50309 during normal business hours of 7:00

a.m. to 4:30 p.m. Central Time, Monday through Friday.

(2) *Regions.* Information in the report will be aggregated and reported by geographic regions. Geographic regions will be defined in such a manner as to avoid divulging data on individual firms' operations and may be modified from time to time.

(3) *Reported information.* The monthly report will provide the following information:

(i) The types of existing contracts for each geographic region.

(ii) The types of contracts currently being offered to additional producers or available for renewal to currently contracted producers in each geographic region.

(iii) The sum of packers' reported estimates of total number of swine committed by contract for delivery during the next 6 and 12 months beginning with the month the report is published. The report will indicate the number of swine committed by geographic reporting region and by type of contract.

(iv) The types of conditions or circumstances as reported by packers that could result in expansion in the numbers of swine to be delivered under the terms of expansion provisions in the contracts at any time during the ensuing 12 calendar months.

(v) The sum of packers' reported estimates of the maximum total number of swine that potentially could be delivered during each of the next 6 and 12 months if all expansion provisions in current contracts are executed. The report will indicate the sum of estimated maximum potential deliveries by geographic reporting region and by type of contract.

Dated: August 28, 2000.

JoAnn Waterfield,

Acting Administrator Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 00–22393 Filed 9–1–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 205–2000]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from the following subsections of the Privacy Act: The system of records is CaseLink Document Database for Office of Special Counsel—Waco, JUSTICE/OSCW–001 as described in today's notice section of the **Federal Register**. The system of records may contain information which relates to official Federal investigation. The exemptions are necessary to protect law enforcement and investigatory information and functions as described in the proposed rule and will be applied only to the investigatory information contained in this system.

DATES: Submit any comments by October 5, 2000.

ADDRESSES: Address all comments to Thomas E. Wack, Office of Special Counsel—Waco, 200 N. Broadway, 15th Floor, St. Louis, Missouri 63102.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

Executive Order No. 12866

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

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Dated: August 28, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR Part 16 by adding to Subpart E—Exemption of Records Systems under the Privacy Act, § 16.104 to read as follows:

§ 16.104 Exemption of Office of Special Counsel—Waco System

(a)The following system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k): CaseLink Document Database for Office of Special Counsel—Waco, JUSTICE/OSCW–001. These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(b) Only that portion of this system which consists of criminal or civil investigatory information is exempted for the reasons set forth from the following subsections:

(1) Subsection (c)(3). To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him or her would inform that individual of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties and civil remedies.

(2) Subsection (c)(4). This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) Subsection (d)(1). Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others.

(4) Subsection (d)(2). Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(5) Subsections (d)(3) and (4). These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) Subsections (e)(1) and (5). It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete; but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide leads in criminal investigations.

(7) Subsection (e)(2). To collect information from the subject individual would serve notice that he or she is the subject of criminal investigative or law enforcement activity and thereby present a serious impediment to law enforcement.

(8) Subsection (e)(3). To inform individuals as required by this subsection would reveal the existence of an investigation and compromise law enforcement efforts.

(9) Subsection (e)(8). To serve notice would give persons sufficient warning to evade law enforcement efforts.

(10) Subsection (g). This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

[FR Doc. 00–22673 Filed 9–1–00; 8:45 am]

BILLING CODE 4410–CJ–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–116–1–7437b; FRL–6862–6]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Transfer Operations, Loading and Unloading of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action on revisions to the Texas State Implementation Plan (SIP). The revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC) Transfer Operations, specifically, the loading and unloading of VOCs from gasoline terminals and bulk plants in the ozone nonattainment areas and in the eastern half of Texas. The EPA is approving these revisions to regulate emissions of VOCs in accordance with the requirements of the Federal Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment.

The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by October 5, 2000.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION: This document concerns Control of Air Pollution from VOC Transfer Operations, specifically, the loading and unloading of VOCs from gasoline terminals and bulk plants in the ozone nonattainment areas and in the eastern half of Texas. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 2, 2000.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 00–22515 Filed 9–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241–0241b; FRL–6854–4]

Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Sacramento Metropolitan Air Quality Management Districts (SMAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emergency episodes. We are proposing to approve a local rule to regulate emergency episodes under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 5, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Sacramento Metropolitan Air Quality Management District, 777 12th Street, 3rd Floor, Sacramento, California 95814–1908.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744–1189.

SUPPLEMENTARY INFORMATION: This proposal addresses SMAQMD Rule 701. In the Rules and Regulations section of this **Federal Register**, we are approving this rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 28, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–22652 Filed 9–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MD–103–3055b; FRL–6862–3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Maryland; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Maryland's 111(d)/129 plan (the "plan") for the control of air pollutant emissions from hospital/medical/infectious waste incinerators (HMIWIs). The plan was developed and submitted to EPA by the Maryland Department of the Environment, Air and Radiation Management Administration (MARMA), on April 14, 2000. EPA is publishing this approval action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments.

DATES: Comments must be received in writing by October 5, 2000.

ADDRESSES: Comments may be mailed to Denis M. Lohman, Acting Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule, of the same title, which is located in the rules section of the **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 21, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–22517 Filed 9–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OEI-100004; FRL-6722-3]

RIN 2070-AC00

Addition of Diisononyl Phthalate Category; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to a petition filed under section 313(e)(1) of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA is proposing to add a diisononyl phthalate (DINP) category to the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and section 6607 of the Pollution Prevention Act (PPA). EPA is proposing to add this chemical category to the EPCRA section 313 list pursuant to its authority to add chemicals and chemical categories because EPA believes this category meets the EPCRA section 313(d)(2)(B) toxicity criterion. The proposed addition of this category is based on DINP's carcinogenicity and liver, kidney, and developmental toxicity.

DATES: Comments, identified by the docket control number OEI-100004, must be received by EPA on or before December 4, 2000.

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** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical information on this proposed rule contact: Daniel R. Bushman, Petitions Coordinator, Environmental Protection Agency, Mail Code 2844, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 260–3882, e-mail address: bushman.daniel@epa.gov. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: (703) 412–9877, or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture, process, or otherwise use any of the chemicals included in the proposed DINP category. Potentially affected categories and entities may include, but are not limited to:

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

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

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

1. *Electronically.* You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," 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/.

2. *In person.* The Agency has established an official record for this proposal under docket control number OEI-100004. The official record consists of the documents specifically referenced in Unit VIII. of this proposal and other information related to this proposal,

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 is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., "OEI-100004") in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your 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.* Submit your comments electronically by e-mail to: "oppt.ncic@epa.gov." Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OEI-100004. Electronic comments on this proposal may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

You may claim information that you submit in response to this proposal as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction

A. What is the Statutory Authority for this Proposed Action?

EPA is proposing this action under EPCRA section 313(d) and (e)(1), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

B. What is the General Background for this Proposed Action?

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

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets forth criteria for these actions. Under EPCRA section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

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

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans

(i) cancer or teratogenic effects, or

(ii) serious or irreversible

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can be reasonably anticipated to cause, because of

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

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

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479) to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compounds categories. EPA has also published in the **Federal Register** of November 30, 1994 (59 FR 61432) a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

III. What is the Description of the Petition?

On February 29, 2000, EPA received a petition from the Washington Toxics Coalition (WTC) requesting EPA to add DINP to the list of toxic chemicals subject to reporting under EPCRA Section 313 and PPA section 6607. The WTC contends that DINP causes cancer, systemic toxicity, developmental toxicity, and endocrine disruption, and therefore should be added to the list of chemicals subject to reporting under EPCRA section 313 and PPA section 6607. The petitioner alleges that DINP is "a dangerous phthalate ester that is used as the principal plasticizer in toys and many other products used by children and adults." WTC also claims that "DINP has been shown to cause cancer

and other very serious toxic effects." The petitioner also asserts that "in every study conducted to measure DINP exposure from children's use of plastic, DINP has been shown to migrate from the plastic into saliva when the plastic object is chewed or put into the child's mouth (Babich, 1998)."

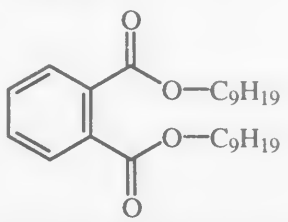
IV. What was EPA's Technical Review of Diisononyl Phthalate (DINP)?

In reviewing DINP for listing, EPA conducted a thorough hazard assessment and has preliminarily determined, based on the weight-of-the evidence, that there is sufficient evidence to establish that the DINP category met the statutory criteria for addition to EPCRA section 313. To make this determination, EPA senior scientists reviewed readily available toxicity information on the chemical for each of the following effect areas: acute human health effects; cancer and other chronic human health effects; and environmental effects. In addition, EPA reviewed information on the environmental fate of the chemical. The review is summarized in this proposal, and a more detailed discussion for each related topic can be found in EPA's technical report (Ref. 1). Referenced studies are contained in the public docket.

The hazard assessment was conducted in accordance with relevant EPA guidelines for each adverse human health or environmental effect (Refs. 14, 15, 16, 17, 18 and 21). During this assessment, the severity and significance of the effects induced by the chemical, the dose level causing the effect, and the quality and quantity of the available data, including the nature of the data (e.g., human epidemiological, laboratory animal, field or workplace studies) and confidence level in the existing data base, were all considered. EPA's assessment preliminarily concluded that the DINP category can reasonably be anticipated to cause carcinogenicity and liver, kidney, and developmental toxicity. In light of the continuous assessment of the developmental and reproductive toxicity potential of phthalates by the National Toxicology Program, the Agency may decide to evaluate potential hazards from other branched alkyl di-ester phthalates in the future (e.g., with eight or ten carbon alkyl chains).

A. What is the Chemistry and Use of DINP?

Diisononyl phthalates (DINP) are the branched alkyl di-esters of 1,2-benzenedicarboxylic acid in which the alkyl ester moieties contain a total of nine carbons. They constitute a family of di-ester phthalates widely used as plasticizers. They are colorless, oily liquids with high boiling points, low volatilities, and are poorly soluble in water (less than 10^{-4} milligrams per liter (mg/L)). Multiple CAS numbers are associated with DINP: 28553-12-0, 71549-78-5, 14103-61-8 and 68515-48-0. There is no single generic CAS number that represents all DINPs. The chemicals represented by CAS numbers 28553-12-0, 71549-78-5, and 14103-61-8 consist of a mixture of isomers (compounds which have the same molecular formula but differ in the arrangement of their atoms). The alkyl ester moieties of the DINP esters represented by the three CAS numbers stated above are branched and contain a total of nine carbons. These alkyl ester moieties are represented by the molecular formula C_9H_{19} (see structure below).



The molecular formulas of these nine-carbon alkyl ester moieties are the same for these DINP isomers. They differ in structure due to the arrangement of the carbons in the alkyl ester moieties. CAS number 68515-48-0 is also considered a DINP, but unlike the chemicals represented by the other three CAS numbers discussed above, 68515-48-0 consists of di-ester phthalates with nine-carbon alkyl ester moieties (approximately 70% by weight), mixed with lesser amounts of di-ester phthalates with eight- and ten-carbon alkyl ester moieties.

Of the chemicals represented by the four CAS numbers stated above, two (68515-48-0 and 28553-12-0) were reported by industry to EPA under the Inventory Reporting Regulations at 40 CFR part 710 of having production volumes of greater than 10,000 pounds per year. Actual production volumes for the chemicals represented by these two CAS numbers ranged in the millions of pounds per year. While reviewing data for the hazard assessments, it was noted that only a limited number of studies reported the CAS numbers for the DINP test chemical base stocks. When reported, the CAS numbers were either 68515-48-0 or 28553-12-0. These two CAS numbers represent the primary DINP products manufactured commercially in the United States. Again, these two CAS numbers represent a mixture of DINP isomers and not any one single specific DINP isomer. There was no literature available for review which identified a single specific DINP isomer as the test chemical. Please refer to EPA technical report (Ref. 1) for the full report on chemistry and environmental fate.

The principle use of DINP is as a plasticizer, particularly in the production of polyvinyl chloride (PVC). The treatment of plastics with DINP provides greater flexibility and softness to the final product. Some of the uses of DINP treated plastics are the production of coated fabrics, plastic toys, electrical insulation, and vinyl flooring. In 1999, at the request of the U.S. Consumer Product Safety Commission (CPSC), manufacturers voluntarily removed DINP from toys intended to be mouthed and intended to be used by children under age 3, due to health concerns. The voluntary action has had little impact on the demand for DINP as DINP is used in other types of toys (e.g., squeeze toys) and in other products (Refs. 1 and 15).

Approximately 2 billion pounds of phthalate plasticizers are produced in the United States each year. Of this total, production of DINP represents approximately 10% to 15% of the market, or 200 to 300 million pounds per year (Ref. 1). This figure is supported by the *Chemical Economics Handbook* (CEH), published by SRI, a proprietary source of information on the chemical industry which estimates a 1999 U.S. production of DINP of 250 million pounds (Ref. 20). Domestic consumption is approximately equal to production (Ref. 1).

B. What are the Environmental Fate Data for DINP?

Due to the limited available information specific to DINP, some of the information presented is based upon other di-ester phthalates, in particular di-octyl phthalates. Because of the close similarity in structure and physical-chemical properties of DINP to other di-ester phthalates, appropriate environmental fate analogies can be deduced for DINP (Ref. 1).

In water, hydrolysis is not considered a major mechanism for the degradation of phthalate esters under typical environmental conditions. At a neutral pH, phthalate esters are hydrolyzed at slow rates. The hydrolysis of DINP can be characterized as a two-step process, with the first step resulting in the creation of a monoester phthalate and one free nine-carbon alcohol molecule, and the second hydrolysis step resulting in the formation of phthalic acid and the

creation of a second nine-carbon alcohol (Ref. 1).

Due to its physical-chemical properties, DINP can be expected to partition in the environment to soils and sediments. Modeling results indicate that DINP would reside in the sediment fraction of rivers, ponds, and eutrophic lakes where they would be susceptible to biological degradation (Ref. 1). Microorganisms from diverse environments have been shown to degrade phthalate esters and associated degradation products. The microbial metabolism of phthalates under both aerobic and anaerobic conditions begins by ester hydrolysis resulting in the formation of the monoester and the corresponding alcohol. The rate of degradation is dependent upon chemical concentration and test matrix. Half-life values range from weeks to months. Biological degradation of the phthalates appears to be the dominant loss mechanism in the environment.

Very limited experimental data are available on the bioaccumulation potential of DINP. In general it can be stated that phthalates that are readily biotransformed have limited potential to bioaccumulate in most aquatic and terrestrial food animals. The Estimation Programs Interface for Windows (EPIWIN) model estimates a BCF value of 3.162 for DINP, indicating low bioaccumulation potential (Ref. 1).

Based on the available environmental fate data and model estimates, DINP is not expected to persist in most waters and soils or to bioaccumulate in aquatic or terrestrial organisms.

C. What are the Absorption and Metabolism Data for DINP?

DINP is well absorbed in the gastrointestinal (GI) tract of the rat and readily distributed to major tissues, particularly the liver, within 1 hour of administration; studies have shown that the majority of an oral dose of ^{14}C-DINP is excreted in the urine with the majority of the radiolabeled species appearing within 24 to 48 hours. DINP is poorly absorbed through the skin. In a dermal absorption study in rats, only 3% of the applied dose was recovered by the end the 7 days (Ref. 1). DINP is de-esterified to the monoester in the GI tract which is further metabolized by side chain oxidation to the oxidation products (ketones, diacids, aldehydes/alcohols) or by hydrolysis to phthalic acid occurring primarily in the liver. A major sex difference is demonstrated in the recovery of low amounts of the monoester oxidation products such as in the GI tract of female rats. This may suggest that intestinal hydrolysis of the diester is more limited in female rats. Livers had the highest concentration of radioactivity, followed by kidney, blood, muscle, and fat. There was no evidence of accumulation of DINP or metabolites in blood or tissue following repeated dosing and all metabolic products were completely eliminated by 72 hours.

D. What is EPA's Toxicity Evaluation for DINP?

1. *What is EPA's evaluation of the chronic toxicity of DINP?*

a. *What developmental toxicity data were found for DINP?* DINP has been shown to cause developmental toxicity in rats exposed during gestation to doses as low as 250 milligrams per kilogram per day (mg/kg/day). Developmental effects were observed in a two-generation reproductive study in rats, where the mean pup body weights in males and females of the first generation (F_1) were significantly reduced at all doses including 250 mg/kg/day, the lowest dose tested, by postnatal day (PND) 21. In the second generation (F_2), the mean female pup weight was significantly reduced at 250 mg/kg at PND 7 and male and female pup body weights were reduced on PND 7, 14 and 21 at 290 mg/kg/day. The significant decreases in the mean body weight of pups from two generations may result in serious developmental delays in growth throughout the lifetime of the rat. In a recent meeting conducted by the Consumer Product Safety Commission's Chronic Hazard Advisory Panel on DINP (Ref. 2) the data from the two-generation reproductive toxicity study on DINP (Ref. 3) were analyzed using benchmark dose analysis to more precisely define the dose at which developmental effects would be expected. The serious effect noted was a reduction in offspring (both F_1 and F_2) body weight at all dietary levels during the lactational phase. The estimated point of departure from the data was 200 to 260 mg/kg/day, which was consistent with the experimental dose of 250 mg/kg/day.

Skeletal variations including extra cervical and accessory (14th) ribs were significantly increased in two developmental studies in two different strains of rats. There were statistically significant increases in the percentage of litters with dilated kidney pelvises in both studies (Refs. 4 and 5). Developmental toxicity with the kidney and skeletal system as target organs was evident in the study conducted in Wistar dams given 1,000 mg/kg/day (Ref. 4). There were statistically significant increases in the number of affected fetuses per litter that had rudimentary cervical ribs and accessory 14th ribs in the high dose group. Skeletal malformations (i.e., shortened and bent long bones) were observed in the high dose group. There were increased incidences of dilated kidney pelvises at the high dose; three fetuses also had a total absence of kidney and ureter development. The same skeletal variations were demonstrated in offspring in Sprague-Dawley dams given 500 mg/kg/day while the kidney effects were observed at 1,000 mg/kg/day (Ref. 5). These skeletal variations and kidney effects occurred in the absence of or at minimal maternal toxicity (decreased body weight gain or increased organ weight). While the effect of extra lumbar ribs may not be considered serious malformations, the effect on cervical ribs is of great toxicological concern. Cervical ribs are an uncommon finding and their presence may indicate a disruption of gene expression leading to this structural anomaly (Ref. 22). In addition, there is concern that cervical ribs may interfere with normal nerve function and blood flow. The kidney effects in fetuses might lead to progressive kidney damage and impaired kidney function and therefore are considered to be serious.

b. *What other chronic toxicity effects data were found for DINP?* Increased liver weight and liver enzyme activities occurred at doses of DINP as low as 152 mg/kg in rats and chronic liver lesions were noted at 307 mg/kg/day. These liver effects are indicators of serious liver damage produced by DINP. In addition, these effects are early indicators of the tissue damage which leads to DINP-induced liver tumors (Ref. 7).

In addition to chronic liver toxicity, biochemical indicators of chronic kidney toxicity were evident in male rats given DINP at 307 mg/kg/day and female rats given DINP at 885 mg/kg/day. Also, chronic progressive irreversible kidney damage (nephropathy) occurred in female mice exposed to DINP at 1,888 mg/kg/day which lead to early mortality (Refs. 6 and 7).

c. *What carcinogenicity data were found for DINP?* DINP is a liver carcinogen in rats and mice. Liver tumors have been demonstrated in male F-344 rats exposed to dietary DINP at 733 mg/kg/day and female and male B6C3F1 mice exposed to 335 and 741 mg/kg/day, respectively, for 2 years (Ref. 6). Based on these data, EPA currently believes that DINP is a carcinogen.

One issue that has been raised with respect to other phthalate esters, such as di-(ethylhexyl) phthalate (DEHP), is the mechanism of the tumor production in

rodents (peroxisome proliferation-induced hepatocarcinogenicity) and its relevance to human cancer risk. DEHP's cancer classification is currently being reviewed by the Agency. As with DEHP, in the DINP studies the liver tumor production in rodents is associated with peroxisome proliferation. Several subchronic and chronic studies in rats (21-day, 13 week) demonstrate biochemical evidence of dose-related peroxisome proliferation in liver. Studies in rat hepatocytes indicate that the monoester (MINP) is the active form of DINP which stimulates peroxisomes. It has been suggested that liver tumors induced by chronic peroxisome proliferation are unique to rodents in that rats and mice are particularly responsive to peroxisome proliferators whereas other species (hamsters, guinea pigs, primates and humans) are relatively resistant. However, the Agency believes that there are still questions regarding the relationship between liver tumors and peroxisome proliferation. In accordance with EPA's cancer guidelines (Refs. 14 and 21), in the event that the data are insufficient to demonstrate that a response in animals is not relevant to any human situation, the default assumption is that positive effects in animal studies indicate that the agent under study can have carcinogenic potential in humans. Therefore, at this time, EPA's belief that DINP can reasonably be anticipated to cause cancer in humans is unchanged.

DINP has been shown to induce kidney tumors in male F-344 rats after prolonged exposure (2 year) to high doses (733 mg/kg/day) of dietary DINP (Ref. 7). These tumors occurred in male rats at high doses and a male rat-specific mechanism involving alpha $_{2u}$-globulin accumulation in the kidney has been postulated. However, in the same study, indicators of kidney toxicity occurred in females rats given 885 mg/kg/day as evidenced as a high urine creatinine clearance, suggesting a compromised ability to concentrate in the kidney tubules and a high blood urea nitrogen (biomarker of kidney damage). Also, in a chronic toxicity study in mice, female mice exposed to 1,888 mg/kg/day had a statistically significant increase in the incidence and severity of chronic progressive nephropathy which lead to early mortality (Ref. 6). The kidney toxicity in female rats and the chronic progressive kidney toxicity in female mice argues against a male rat-specific mechanism (i.e. alpha $_{2u}$-globulin accumulation). The tumors in male rats could be the result of a response to kidney damage induced by chronic DINP administration and not solely a consequence of the alpha $_{2u}$-globulin mechanism (Ref. 8).

There is also a dose-related statistically significant increase in the incidence of mononuclear cell leukemia (MNCL) with associated anemia (decreased hemoglobin levels and red blood cell numbers) and decreased body weight gain in male and female Fisher rats exposed to doses of 152/307 mg/kg/day and higher (Ref. 7). It is known that MNCL is life threatening in Fisher rats and results in a decreased life span. In addition, although MNCL is recognized as a common neoplasm in Fisher rats, the mechanism of producing MNCL is not completely understood. Therefore, the significance of MNCL and its biological relevance for human cancer risk remains uncertain and cannot be discounted.

d. *What genotoxicity data were found for DINP?* DINP has been evaluated for gene mutations, cytogenetic effects, cell transformation ability and unscheduled DNA synthesis and none of the data evaluated indicate that DINP is mutagenic or genotoxic (Ref. 1).

e. *What reproductive toxicity data were found for DINP?* No reproductive toxicity was observed in a one- and two-generation reproductive study in rats at doses as high as 1,000 mg/kg (Ref. 3). However, in this study, landmarks of sexual maturation (i.e., preputial separation, anogenital distance, nipple retention, biochemical and structure of the developing reproductive system) were not examined. These landmarks of sexual maturation are used to assess the effects of a chemical on reproductive tract development. Other phthalates, such as DEHP and dibutyl phthalate, have been shown to have an effect on reproductive tract development. At this time, therefore, EPA has preliminarily determined that the data are insufficient to indicate whether or not DINP exposures are associated with detectable effects on reproductive function.

f. *What endocrine disruption data were found for DINP?* There are reports that phthalates may have endocrine modulating effects. Early reports suggested that DINP was very weakly estrogenic in *in vitro* screening assays using a recombinant yeast screen and estrogen-responsive human breast cancer cell lines (Ref. 9). Although these screening assays are highly specific for estrogen, later *in vivo* studies have shown that neither DINP nor any other phthalate was positive in screening assays such as vaginal certification and uterotrophic assays in mice (Ref. 10). Therefore, EPA has preliminarily determined that there is insufficient evidence, at this time, to demonstrate whether or not DINP causes hormone disruption.

2. *What acute toxicity data were found for DINP?* Acute toxicity studies in rats and rabbits indicate that DINP, like other long chain phthalate esters, has low oral (rat oral LD_{50} >10 grams/kilogram (g/kg)) (LD_{50}, i.e., the dose that is lethal to 50% of test organisms) and dermal (rabbit dermal LD_{50} >3 g/kg) acute toxicity. Acute inhalation toxicity (LC_{50}) (i.e., the concentration that is lethal to 50% of test organisms) data are not available because information on measurements of test-chamber atmospheric levels were generally inadequately reported or the generating and monitoring concentrations were not described. However, the low vapor pressure of DINP usually precludes inhalation of any significant amount except perhaps as an aerosol adsorbed to airborne particulates. DINP is only minimally irritating to eyes and skin. In human adults, it is estimated that the probable lethal oral dose is between .5 and 5 g/kg (1 ounce—1 quart/adult). DINP does not penetrate the skin very well (3% dermal absorption) and is not a dermal sensitizer (Ref. 1). Based on the available data, EPA has preliminarily determined that DINP does not cause acute toxic effects.

3. *What ecotoxicity data were found for DINP?* Based on available ecotoxicity data, this group of chemicals has not been tested at levels high enough to cause 50% mortality in fish or invertebrates. In one study, insufficient mortality was observed at the highest concentrations tested (Ref. 12) to calculate acute toxicity values. Technically, the acute no observed effect concentrations (NOECs) for these chemicals are greater than the highest concentrations tested. The lowest effect level for assessment purposes is <0.06 mg/L for Daphnia magna, and 0.10 mg/L for fathead minnows.

The only reported studies with actual effects were embryo larval studies with Channel catfish, Fowler's toad, and Leopard frog, with reported effects noted between 1 and 100 parts per million. The water solubility of DINP must be considered as a factor in these studies. Since this compound is sparingly soluble (water solubility is approximately 10^{-4} mg/L), it would be difficult to conduct aquatic toxicity studies at concentrations high enough to cause mortality. All of the published aquatic toxicity studies have unsuitable test designs for these poorly water soluble compounds.

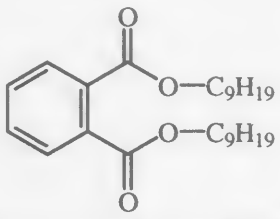
The reported maximum acceptable toxicant concentration of 0.055 mg/L (Ref. 13), actually was due to physical entrapment of Daphnids at the surface

of the test vessel, rather than due to direct toxicity.

Based on the available data, EPA cannot preliminarily determine whether or not DINP can cause or reasonably be anticipated to cause, because of its toxicity, a significant adverse effect on the environment.

E. What is the Basis for a DINP Category?

In this proposal, the Agency has classified DINP as a category consisting of any branched alkyl di-ester of 1,2-benzenedicarboxylic acid in which the alkyl ester moieties contain a total of nine carbons. The molecular formula for DINP is $C_{26}H_{42}O_4$. The structure of DINP is shown below with the nine carbon alkyl ester moieties represented by the molecular formula -C_9H_{19}.



EPA is proposing to create the DINP category for several reasons. There is no single CAS number which encompasses all DINP isomers. The human health hazard assessment included the review of studies conducted with chemical test base stocks which consisted of solely diisononyl phthalates isomers or test stocks composed of mostly DINP (approximately 70% by weight). Of the studies reviewed, all were found to show serious adverse human health effects (liver, kidney, or developmental toxicity or carcinogenicity) regardless of the test base stock that was used. The common component of the tested materials are the branched alkyl di-esters of 1,2-benzenedicarboxylic acid with nine carbon alkyl ester moieties. EPA believes that the available data on the carcinogenicity and liver, kidney, and developmental toxicity for certain members of the DINP category for which EPA has data are sufficient for listing those members under EPCRA section 313(d)(2)(B). EPA also believes that there is sufficient information to conclude that based on structural and physical/chemical property similarities to those members of the category for which data are available it is reasonable to anticipate that all members of the DINP category will exhibit carcinogenicity and/or liver, kidney, and developmental toxicity in humans. For these reasons and because no one CAS number adequately covers all diisononyl phthalate isomers, EPA is proposing a DINP category.

V. What is the Summary of EPA's Technical Review?

After a review of the available data in response to this petition, the Agency has preliminarily determined that there is sufficient evidence for listing this category of DINP on EPCRA section 313 pursuant to EPCRA section 313 (d)(2)(B) because the DINP category can reasonably be anticipated to cause carcinogenicity and liver, kidney, and developmental toxicity. The following is a summary of the findings.

DINP has been shown to cause developmental toxicity in prenatal rats. This developmental toxicity included significant decreases in the mean body weight of pups from two generations which may result in serious developmental delays in growth throughout the lifetime. In addition, skeletal variations were observed which may interfere with normal nerve function and blood flow. Kidney effects in fetuses were observed which might lead to progressive kidney damage and impaired kidney function.

DINP has been shown to cause chronic liver and kidney toxicity in rats and mice. The liver effects are indicators of the serious liver damage produced by DINP and are early indicators of the tissue damage which leads to DINP-induced tumors. In addition to chronic liver toxicity, biochemical indicators of chronic kidney toxicity were evident in male and female rats. Also, chronic progressive irreversible kidney damage (nephropathy) occurred in female mice which lead to early mortality.

DINP has been shown to be a liver carcinogen in rats and mice, to induce kidney tumors in male rats, and to increase the incidence of mononuclear cell leukemia.

VI. What is EPA's Explanation of the Petition Response and Rationale for Listing?

EPA is proposing to grant the petition to add DINP to the EPCRA section 313 list of toxic chemicals. In light of the discussion in Unit IV.E., EPA is proposing to add a chemical category entitled "Diisononyl Phthalate (DINP) category," to the EPCRA section 313 list of toxic chemicals. This category will include the four CAS numbers that represent the DINP esters identified by name and CAS number in Unit IV.A., as well as any other branched alkyl di-ester of 1,2-benzenedicarboxylic acid in which the alkyl ester moieties contain a total of nine carbons. As EPA has explained in the past (see 59 FR 61442-61443 November 30, 1994), the Agency believes that EPCRA allows the Agency, in its discretion, to add a chemical category to the list, where EPA identifies the toxic effect of concern for at least one member of the category and then shows why that effect can reasonably be expected to be caused by all other members of the category. Here, individual toxicity data do not exist for all members of the proposed category; however, as discussed in Unit IV.E. of this preamble, EPA believes that the available data on the carcinogenicity and liver, kidney, and developmental toxicity for certain members of the DINP category are sufficient for listing those members under EPCRA section 313(d)(2)(B). EPA currently believes that it is reasonable to anticipate that all members of the DINP category as described will exhibit carcinogenicity and liver, kidney, and developmental toxicity in humans and that creating a category of DINP is the most appropriate way to list this class of chemicals.

EPA does not believe that it is required to consider exposure for chemicals that are moderately high to highly toxic based on a hazard assessment when determining if a chemical can be added for chronic effects pursuant to EPCRA section 313(d)(2)(B) (59 FR 61432, 61433, 61440-61442). The technical review of the toxicity data clearly indicates that DINP is known to cause or can reasonably be anticipated to cause cancer and other serious or irreversible chronic liver, kidney, and developmental toxicity in humans. EPA has preliminarily determined that DINP can reasonably be anticipated to cause cancer and that the observed liver, kidney, and developmental toxicity occur at relatively low doses, and thus the Agency believes DINP to have moderately high to high chronic toxicity for each of these effects. EPA also believes that there is sufficient information to conclude that all of the members of the DINP category are moderately high to highly toxic based on structural and physical/chemical property similarities to those members of the category for which data are available. EPA, therefore, does not believe that an exposure assessment is required or appropriate for determining whether the DINP category (or its members) proposed for listing in this rulemaking meet the criteria of EPCRA section 313(d)(2)(B).

In sum, EPA believes that there is sufficient evidence to show that the DINP category is known to cause or can reasonably be anticipated to cause cancer and other serious or irreversible chronic liver, kidney, and

developmental toxicity in humans. EPA believes it has the authority to list the DINP category under EPCRA section 313 based on any one of these effects. Therefore, EPA believes that this chemical category meets the EPCRA section 313(d)(2)(B) criteria for listing.

For purposes of EPCRA section 313, threshold determinations for chemical categories must be based on the total of all chemicals in the category (see 40 CFR 372.25(d)). For example, a facility that manufactures three members of a chemical category would count the total amount of all three chemicals manufactured towards the manufacturing threshold for that category. When filing reports for the DINP category, the releases are determined in the same manner as the thresholds. One report is filed for the category and all releases are reported on one Form R (the form for filing reports under EPCRA section 313 and PPA section 6607). With regard to mixtures of chemicals, facilities only need to report releases and other waste management activities for the portion of the mixture that is covered by the category. For example, CAS number 68515-48-0 represents a mixture of phthalate esters which includes alkyl ester moieties containing eight, nine, and ten carbons. For such a mixture only the percentage of the mixture that contains phthalate esters that have nine carbons in the alkyl ester moiety would be reportable under the DINP category.

VII. What Issues is EPA Requesting Comment On?

EPA requests public comment on this proposal to add a DINP category to the EPCRA section 313 list of toxic chemicals. Specifically, EPA requests comment on its technical review of DINP, including its environmental fate, absorption and metabolism, toxicity, and carcinogenicity, and on EPA's preliminary determination that there is sufficient evidence to establish that the DINP category meets the statutory criteria for addition to EPCRA Section 313. EPA also requests that commenters provide any additional data they may have on the environmental fate, absorption and metabolism, toxic effects and carcinogenicity of DINP. Finally, EPA requests comment on alternative methods for adding DINP instead of by category.

VIII. What are the References Cited in this Proposed Rule?

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IX. What are the Regulatory Assessment Requirements for this Proposed Action?

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is subject to review by the Office of Management and Budget (OMB). Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not a "significant regulatory action" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, the Agency hereby certifies that this proposed action does not have a significant adverse economic impact on a substantial number of small entities.

Based on what EPA currently knows about DINP EPA believes that, under current EPCRA reporting thresholds, between 35 and 100 additional TRI reports would be filed and no facility will file more than 1 additional TRI report. EPA estimates a first year time burden on reporting facilities to be 78 hours, or less, for a cost of $5,640 per affected facility or less. These costs are approximately $5,640 per report in the first year (for a total first year cost of between $195,000 and $565,000). In subsequent years this cost falls to $4,000 per report (for a total cost of $140,000 to $400,000). These estimates include the time needed to review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection of information; and transmit or otherwise disclose the information. The actual burden on any specific facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility.

The estimated time burden for the first year of reporting is 0.4% of the labor hours of the firms with exactly ten full-time employees, which have the smallest number of total labor hours of any firm subject to this rule. Facilities eligible to use Form A (those meeting the appropriate activity threshold which have 500 pounds per year or less of reportable amounts of the chemical) will have a lower burden. Thus this rule is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed economic analysis is located in EPA's technical report (Ref. 1).

C. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et. seq*. Currently, the facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 may use either the EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350-1), or the EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350-2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 42 U.S.C. 11042: 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Form R, supplier notification, and petitions under OMB Control 1B 2070-0093 (EPA ICR 1B1363): those related to Form A under OMB control 2070-0143 (EPA ICR 1B 1704): and those related to trade secret designations under OMB Control 2070-0078 (EPA ICR1B 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), 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 of EPA's regulations are listed in 40 CFR part 9, 48 CFR chapter 15, and displayed on the information collection instruments (e.g., forms, instructions).

For Form R, EPA estimates the industry reporting and recordkeeping burden for collecting this information to average 78 hours per report in the first year, at an estimated cost of $5,640 per Form R (for a total first year cost of between $195,000 and $565,000). In subsequent years, the burden for collecting this information is estimated to average 55 hours per report, at an estimated cost of $4,000 per report (for a total cost of $140,000 to $400,000). These estimates include the time needed to become familiar with the requirement (first year only); review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection information; and transmit or otherwise disclose the information. The actual burden on any facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility. Upon promulgation of a final rule, the Agency may determine that the existing burden estimates in both ICRs need to be amended in order to account for an increase in burden associated with the final action. If so, the Agency will submit an information collection worksheet (ICW) to OMB requesting that the total burden in each ICR be amended, as appropriate.

The Agency would appreciate any comments or information that could be used 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 propose collection of information, including the validity of the methodology and assumptions used; (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 electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Please submit your comments within 90 days as specified at the beginning of this proposal. Copies of the existing ICRs may be obtained from Sandy Farmer, Office of Environmental Information (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by calling (202) 260-2740, or electronically by sending an e-mail message to "farmer.sandy@epa.gov".

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

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4), EPA has determined that this proposed 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. It is estimated that the total cost of the rule, which is summarized in Unit IX.B. of this preamble, is $195,000 to $565,000 in the first year of reporting. In addition, today's proposal would not create a mandate on State, local or tribal governments, nor would it significantly or uniquely affect the communities of Indian tribal governments; therefore, it is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998). Nor would this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16 1994), entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations,* the Agency has considered environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income and minority populations. By adding a DINP category to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including low-income populations and minority populations) with access to data that may assist them in lowering exposures and consequently reducing chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriates steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the proposed rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

F. Executive Order 13045

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

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, and sampling procedures) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards, nor did EPA consider the use of any voluntary consensus standards. In general, EPCRA does not prescribe technical standards to be used for threshold determinations or completion of EPCRA section 313 reports. EPCRA section 313(g)(2) states that "In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation."

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund, Toxic chemicals.

Dated: August 25, 2000.

Elaine G. Stanley,

Director, Office of Information Analysis and Access.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

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

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

2. In § 372.65 by adding alphabetically one chemical category to paragraph (c) to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(c) * * *

Category name	Effective date
* * * * * * *	
Diisononyl Phthalates (DINP): Includes all branched alkyl di-esters of 1,2 benzenedicarboxylic acid in which alkyl ester moieties contain a total of nine carbons.	1/1/01
* * * * * * *	

[FR Doc. 00–22656 File 9–1–00; 8:45 am]

BILLING CODE 6560–09–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1905; MM Docket No. 00–146, RM–9937; MM Docket No. 00–147, RM–9938; MM Docket No. 00–148, RM–9939; MM Docket No. 00–149, RM–9940]

Radio Broadcasting Services; Marietta, MS; Lake City, CO; Quanah, TX; Smiley, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four new allotments to Marietta, MS; Lake City, CO; Quanah, TX; and Smiley, TX. The Commission requests comments on a petition filed by Robert Sanders proposing the allotment of Channel 250A at Marietta, Mississippi, as the community's first local aural transmission service. Channel 250A can be allotted to Marietta in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.3 kilometers (0.8 miles) east to avoid a short-spacing the licensed sites of Station WWMS(FM), Channel 248C1, Oxford, Mississippi,

and Station WZLQ(FM), Channel 253C1, Tupelo, Mississippi. The coordinates for Channel 250A at Marietta are 34–30–20 North Latitude and 88–27–18 West Longitude. *See* Supplementary Information.

DATES: Comments must be filed on or before October 10, 2000, and reply comments on or before October 25, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Robert Sanders, 135 Highway 371, Marietta, Mississippi (Petitioner for the Marietta, MS proposal); Matthew H. McCormick, Esq., Reddy, Begley & McCormick, 2175 K Street, NW., Suite 350, Washington, DC 20037 (Counsel for The Parker Radio Project); Marie Drischel, General Partner, NationWide Radio Stations, 496 County Road 308, Big Creek, Mississippi 38914 (Petitioner for the Quanah, TX proposal); and Henry E. Crawford, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Ave., NW., Suite 301, Washington, DC 20016 (Counsel for Smiley Community Radio Company).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–146; MM Docket No. 00–147; MM Docket No. 00–148; and MM Docket No. 00–149, adopted August 9, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

The Commission requests comments on a petition filed by The Parker Radio Project proposing the allotment of Channel 247A at Lake City, Colorado, as the community's first local aural transmission service. Channel 247A can be allotted to Lake City in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 247A at Lake City are 38–01–47 North Latitude and 107–18–52 West Longitude.

The Commission requests comments on a petition filed by NationWide Radio Stations proposing the allotment of Channel 233C3 at Quanah, Texas, as the community's second local FM transmission service. Channel 233C3 can be allotted to Quanah, Texas in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 233C3 at Quanah are 34–17–52 North Latitude and 99–44–23 West Longitude.

The Commission requests comments on a petition filed by Smiley Community Radio Company proposing the allotment of Channel 280A at Smiley, Texas, as the community's first local aural transmission service. Channel 280A can be allotted to Smiley in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4.02 miles) southeast to avoid a short-spacing to the licensed site of Station KOUL(FM), Channel 279C1 Sinton, Texas, and to the proposed reference site for Channel 281C1 at Pearsall, Texas. The coordinates for Channel 280A at Smiley are 29–13–34 North Latitude and 97–35–18 West Longitude. Since Smiley is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

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

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–22561 Filed 9–1–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1899, MM Docket No. 00–145, RM–9845]

Radio Broadcasting Services; Lowry City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Bott Communications, Inc. requesting the allotment of Channel 285A at Lowry City, Missouri, as the community's first FM broadcast service. The coordinates for Channel 285A at Lowry City are 38–02–24 and 93–38–28. There is a site restriction 13.5 kilometers (8.4 miles) southeast of the community.

DATES: Comments must be filed on or before October 10, 2000, and reply comments on or before October 25, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry C. Martin, Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Arlington, Virginia 22209.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–145, adopted August 9, 2000 and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

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 contact.

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

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–22614 Filed 9–1–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF31

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Plant *Yermo xanthocephalus*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), reopen the comment period on the proposal to list the plant *Yermo xanthocephalus* (Desert yellowhead) as a threatened species. The comment period is extended to accommodate the public notice requirement of the Act and to consider any new scientific information. In addition, reopening of the comment period will allow further opportunity for all interested parties to submit comments on the proposal, which was published on December 22, 1998, and allow for comments on the draft conservation agreement, assessment, and strategy (draft agreement) submitted by the Bureau of Land Management for our consideration when making this listing decision. We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule and the draft agreement as it affects the Service's listing decision. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The reopened comment period closes October 5, 2000.

ADDRESSES: Copies of the proposed rule are available on the World Wide Web at <mountain-prairie.fws.gov/endspp/plants/>. You also may request copies from, and submit comments and materials concerning this proposed rule to, the Field Supervisor, U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, Wyoming 82001. Copies of the draft agreement may also be obtained from the above address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Long, Field Supervisor, Wyoming Field Office (see **ADDRESSES** section), telephone 307/772–2374; facsimile 307/772–2358.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1998, we published a rule proposing threatened status for *Yermo xanthocephalus* in the **Federal Register** (63 FR 70745). The original comment period closed on February 22, 1999. Section 4(b)(5)(D) of the Act (16 U.S.C. 1531 *et seq.*) requires us to "publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur." Due to an oversight, we failed to complete this requirement. To correct the oversight, we are reopening the comment period for this proposal to list *Y. xanthocephalus* and publishing the required notices. Additionally, the Bureau of Land Management has asked us to consider its March 2000 draft agreement, regarding *Y. xanthocephalus* prior to making the final listing decision. The reopened comment period will allow for comments regarding the draft agreement as it affects the Service's listing decision. The comment period now closes on October 5, 2000. Written comments should be submitted to the Service (see **ADDRESSES** section).

Yermo xanthocephalus is a recently described Wyoming endemic known only from the south end of Cedar Rim on the summit of Beaver Rim in southern Fremont County. It is a tap-rooted, hairless perennial herb with leafy stems up to 30 centimeters high (12 inches). *Y. xanthocephalus* is restricted to shallow deflation hollows in outcrops of Miocene sandstones of the Split Rock Formation. It is known from a single population occupying an area of less than 2 hectares (5 acres) of suitable habitat. In 1998 this population contained an estimated 15,000 plants and existed entirely on Federal lands. Surface disturbances associated with oil and gas development, compaction by vehicles, trampling by livestock , and randomly occurring catastrophic events threaten the existing population.

Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size or trend of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species;

(5) Biological or physical elements that best describe *Yermo xanthocephalus* habitat that could be essential for the conservation of the species;

(6) Possible alternative noxious weed control, grazing, and oil and gas development practices that will reduce or eliminate impacts to *Yermo xanthocephalus;*

(7) Other management strategies that will conserve the species throughout its range; and

(8) The adequacy of the Bureau of Land Management's draft conservation agreement as it affects threats to the species.

Comments previously submitted during the first comment period need not be resubmitted, as they will be fully considered in the final determination.

Author

The primary author of this document is Mary Jennings of the Wyoming Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 21, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–22555 Filed 9–1–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000816233–0233–0233–01; I.D. 050200A]

RIN 0648–AK23

Fisheries off West Coast States and in the Western Pacific; Precious Corals Fisheries; Harvest Quotas, Definitions, Size Limits, Gear Restrictions, Bed Classification

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes a rule that would make eight changes to the regulations implementing the Fishery Management Plan for Precious Coral Fisheries of the Western Pacific Region (FMP). This proposed rule would: Suspend the harvest for gold coral at the established Makapuu Bed, Oahu; redefine "dead precious coral" as coral without living coral polyps or tissue and redefine "live precious coral" accordingly; apply minimum size restrictions only to live precious corals; prohibit the harvest of black coral unless it has attained a minimum stem diameter of 2.54 cm (1 in) or a minimum height of 122 cm (48 in), except in certain cases; prohibit the use of non-selective fishing gear to harvest precious corals; apply the current minimum size restriction for pink coral to all permit areas; revise the boundaries of the Brooks Bank Bed, Northwestern Hawaiian Islands (NWHI), reduce its harvest quota for pink coral, and suspend the Bed's harvest quota for gold coral; and establish a new NWHI precious coral permit area, French Frigate Shoals (FFS) Gold Pinnacles Bed, and classify this Bed as a conditional bed with a zero harvest quota for all species of precious corals. This comprehensive set of management measures is intended to conserve and reduce the risk of overfishing the precious coral resources, promote optimal utilization of the resource and minimize waste, facilitate effective monitoring and enforcement of harvest quotas, and protect precious coral beds that provide foraging habitat for the endangered Hawaiian monk seal.

DATES: Comments on this proposed rule will be accepted through October 20, 2000.

ADDRESSES: Written comments on this proposed rule must be mailed to Dr. Charles Karnella, Administrator, Pacific Islands Area Office (PIAO), NMFS, 1601 Kapiolani Blvd., Rm. 1101, Honolulu HI 96814; or sent via facsimile (fax) to 808–973–2941. Comments will not be accepted if submitted via e-mail or Internet. Copies of the background document on the proposed regulatory adjustments, including an Environmental Assessment and Initial Regulatory Flexibility Analysis (IRFA), may be obtained from Kitty Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Rm 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, 808–973–2937.

SUPPLEMENTARY INFORMATION: The FMP defines precious coral as any coral of the genus Corallium, consisting of pink corals, as well as gold, bamboo, and black coral species. Pink, gold, and bamboo corals are found in deep water (350 – 1500 m) on solid substrate where bottom currents are strong. Black coral also occurs on solid substrate, but generally at depths less than 100 m. Precious corals typically are solitary and form colonies; however, they do not build reefs. All precious corals are slow growing and are characterized by low rates of mortality and recruitment. Precious corals are known to occur in waters of the U.S. exclusive economic zone (EEZ) around Hawaii (seven locations) and very likely exist off American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Pacific Remote Island Areas. The domestic fishery for precious corals in Hawaii has been dormant for nearly two decades, with the exception of a limited black coral fishery involving less than 10 divers. Recently, several new firms have become interested in harvesting precious corals using manned submersibles in the EEZ around Hawaii. One firm with a permit has been harvesting precious coral from the established Makapuu Bed off the Island of Oahu. Also, recent research and surveys have provided new information on the size and condition of certain precious coral beds off the Hawaiian Islands, on the presence of a new precious coral bed at FFS, NWHI, and on the use of certain precious coral beds as foraging areas for the endangered Hawaiian monk seal. In response to this new information and a reactivated precious coral fishery, in June 1999, the Western Pacific Fishery Management Council (Council) discussed the need for alternative management measures governing the precious coral fisheries. Subsequently, at its October 1999 meeting, under FMP framework procedures, the Council approved eight changes to the regulations implementing the FMP. These regulatory changes were developed by the Council's Precious Coral Plan Team, and reviewed by the Precious Coral Advisory Panel and the Scientific and Statistical Committee.

The first change would be to suspend the harvest quota for gold coral at the established Makapuu Bed based on 1998 surveys that indicated a relatively low gold coral recruitment rate since this bed was last harvested in 1978. A no action alternative and a minimum size for harvesting gold coral at the Makapuu Bed were both rejected because there are insufficient data to show that these alternatives could effectively reduce the risk of overharvesting the gold coral resource.

The second change would be to redefine "dead precious coral" as coral devoid of living coral polyps or tissue and to redefine "live coral precious coral" as coral that has living coral polyps or tissue. These changes are needed to prohibit the harvest of precious coral under a minimum size with live coral polyp or tissue; conversely, corals without any living polyp or tissue (dead coral) may be harvested. The current definition for dead coral is any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed. This definition is too broad because it allows the unrestricted harvest of precious coral colonies that have holes, are discolored, and may be encrusted yet may still have living polyps. Given that scientists, using a submersible at FFS, observed a monk seal foraging around gold coral colonies containing living coral polyps, it is important that living precious corals be given optimal protection.

The third change would be to apply minimum size limits to live precious corals only to maximize the economic yield of the fishery by allowing the harvest of dead coral, regardless of its size. A no action alternative was rejected because it prevents dead corals below the minimum size that have economic value from being harvested.

The fourth change would be to prohibit the harvest of black coral unless it has a minimum stem diameter of 2.54 cm (1 in) or a minimum height of 122 cm (48 in). In order to complement State of Hawaii black coral regulations, the proposed rule would allow fishermen who can document, via State records, landings of black coral during the last 5 years to continue to

harvest black coral, under an exemption. These black coral would have to be harvested in accordance with the State's minimum harvest size (1.91 cm or 3/4 in stem diameter), provided the black coral is harvested by hand. Alternatives to applying the State's minimum harvest size for all fishermen (no exemption) were considered, but were rejected by the Council. The alternative of adopting the State's minimum size would not provide sufficient protection to the reproductive capability of the black coral stock if harvest levels increase significantly. Another alternative that contained no exemption to the Council's proposed minimum size for black coral would result in unacceptable economic burden on a small number of precious coral divers, who have previously landed black corals and operate at very low harvest levels in the fishery. An alternative that would have set a black coral harvest quota based on total pounds harvested was also rejected because it may not be effective in preventing overfishing, and because it would be difficult to enforce.

The fifth change would be to prohibit the use of non-selective gear to harvest any precious coral in the EEZ of the western Pacific region. This measure would eliminate the use of destructive and inefficient gear, such as bottom dredges and tangle nets, that damage essential fish habitat and waste up to 60 percent of the precious corals that are not harvested yet are knocked down by non-selective gear. A no action alternative, as well as an alternative that would have prohibited the use of non-selective gear only in certain permit areas, were both rejected as providing inadequate protection to essential fish habitat and promoting inefficient harvest methods.

The sixth change would be to apply the current minimum harvest size limit (25.4 cm or 10 in minimum height) for pink corals at established beds to all permit areas to prevent the harvest of pink coral colonies that are immature and have not reached full reproductive potential. A no action alternative and an alternative that would apply pink coral size limits only in certain permit areas were rejected because they would not adequately reduce the potential for overharvesting the pink coral resources.

The seventh change would be to modify the boundaries of the Brooks Bank Bed, reduce the Bed's annual pink coral quota from 444 kg (979 lb) to 200 kg (441 lb), and suspend the gold coral quota. These changes reflect new information on the size and composition of the Bed obtained during a survey of the area in 1998, as well as concerns related to the foraging habits of a Hawaiian monk seal colony nearby at FFS. Several monk seals from this colony were observed spending considerable time at the depths where precious corals occur. It is believed that the seals may have been feeding on eels and fish that aggregate around the vertical relief provided by the standing gold coral colonies at Brooks Bank. A no action alternative was rejected on the basis that it could lead to overharvesting of pink corals, as well as affecting the foraging success of monk seals. An alternative that would have revised the Brooks Bed boundaries and classified as a refugium with a prohibition on the harvest of any precious coral was rejected. It was rejected because of the economic impact on fishermen who harvest dead gold and pink corals found mainly as rubble lying on the seabed. It is believed that dead coral rubble, which have economic value, do not provide foraging habitat for the Hawaiian monk seal.

The eighth change would be to classify the newly discovered NWHI precious coral bed near FFS as a conditional bed to be designated as the "French Frigate Shoals Gold Pinnacles Bed" with a zero harvest quota for all precious coral species. This bed has an abundance of gold coral with an estimated standing stock of 3,000 kg (6,614 lb) and an estimated annual maximum sustainable yield of 80 kg (176 lb), but only a few small pink coral colonies that are less than 12.7 cm or 5 inches in height. This classification would protect live pink and gold coral colonies that may be providing foraging habitat for the monk seals. A no action alternative was rejected because without some type of classification, this bed would be included in the Hawaiian Islands exploratory permit area, which consists of all non-classified precious coral beds in Hawaii's EEZ and subject to an area-wide annual quota of 1,000 kg (2,200 lb). Under this scenario, the entire 1,000 kg (2,2000 lb) quota potentially could be harvested from the FFS Gold Pinnacles Bed with significant negative impact on pink and gold corals, and possible depletion of the foraging habitat of monk seals. A second alternative would have classified the FFS Gold Pinnacles Bed as a refugium and prohibited the take of any corals, both living and dead. This alternative was rejected because prohibiting the harvest of dead coral has significant economic impacts. A third rejected alternative would have classified the Bed as a conditional bed and set the annual quota for gold coral at the Bed at 80 kg (176 lb). This alternative was seen as failing to protect monk seal foraging habitat.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA describing the impact the proposed rule, if adopted, would have on small entities. Due to the low level of participation in the western Pacific precious coral fishery (estimated to be less than 10 divers harvesting black coral and one firm using a submersible to harvest precious corals during the past 20 years), aggregate economic impacts resulting from implementation of the proposed measures will be minimal unless there is a significant increase in the number of participants in the fishery. This analysis, however, found that those proposed measures that restrict the harvest of gold coral at the Makapuu Bed, establish a minimum harvest size for all pink corals, limit the harvest of pink coral and restrict the harvest of gold coral at the Brooks Bank Bed, and restrict the harvest of all precious corals from the FFS-Gold Pinnacles Bed would likely have a negative impact on potential fishery revenues.

Maximum potential revenues forgone from the proposed restrictions on gold coral harvest at the Makapuu Bed would total approximately $100,000 annually in the short-run if the actual stock is of sufficient size to support such a harvest. However, it is believed that the current standing stock of gold coral is low enough that this harvest level would not be sustainable. The cost of forgone short-term revenues would be recouped in the long-term through better management of the Makapuu Bed.

Potential revenues lost from the universal application of size restrictions for pink corals are difficult to predict since there is a scarcity of size composition data on existing coral resources; nevertheless, it is believed that a minimum size would result in positive benefits for potential fishery participants through the long-term maintenance of maximum sustainable yields.

Limitations on pink coral harvest from the Brooks Bank Bed is anticipated to result in the loss of potential short-run annual revenues of up to $146,000, but positive long-term benefits would be expected through the long-term maintenance of maximum sustainable yields. Restrictions on gold coral harvest at the Brooks Bank Bed would result in forgone revenues of up to $44,000, while restrictions on the harvest of all precious corals from the FFS-Gold

Pinnacles Bed would be projected to result in a short-run annual loss of $26,000 in potential revenues, primarily from a prohibition on the harvest of gold coral. However, these latter two measures are considered vital to the protection of foraging habitat for the endangered Hawaiian monk seal.

Imposing a minimum harvest size for black corals could also have a negative economic impact on fishery revenues. Given that the proposed rule would provide an exemption for historical participants who continue to rely on hand harvest methods, no effect on current participants would be expected. However, new entrants into the fishery would have to adhere to the Council's proposed minimum size governing the harvest of black coral. It is estimated that 50 percent of the annual average 204.5 kg (450 lbs) of black coral annually harvested from the EEZ meets or exceeds the proposed minimum size.

A prohibition on the use of non-selective gear could result in additional costs for future participants, although only selective gear (e.g., manned submersibles) is being considered by new businesses currently interested in entering this fishery. Hand harvesters would be unaffected by this prohibition. Future participants who wish to use other harvesting methods would be required to invest in manned submersibles, remotely operated vehicles or other new technologies. The exact costs of these new technologies are unknown. It is believed that a remotely operated vehicle can now be obtained for $50,000, which may be approximately equal to the cost of setting up a non-selective harvest operation using tangle nets. Further, the effective yield is higher for submersibles compared to the wasteful practice of non-selective gear used to harvest precious corals. A copy of the IRFA is available from the Council (see **ADDRESSES**).

NMFS has initiated consultation under Section 7 of the Endangered Species Act for this proposed rule. This consultation examines Hawaii's precious coral fishery, managed under the proposed rule, and the likelihood of it having an adverse effect on Hawaiian monk seals. This consultation is expected to be concluded soon.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule. Comments should be sent to Dr. Charles Karnella, PIAO, (see **ADDRESSES**).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing gear, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 28, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.12, the definitions of "dead coral", "live coral", paragraph (2)(iii) under "Precious coral permit area", and paragraph (3) under "Precious coral permit area" are revised and a new paragraph (2)(v) under "Precious coral permit area" is added, to read as follows:

§ 660.12 Definitions.

* * * * *

Dead coral means any precious coral that no longer has any live coral polyps or tissue.

* * * * * *

Live coral means any precious coral that has live coral polyps or tissue.

* * * * *

Precious coral permit area * * *

(2) * * *

(iii) Brooks Bank, Permit Area C–B–3, includes the area within a radius of 2.5 nm of a point 23°58.8' N. lat., 166°42.0' W. long.

* * * * *

(v) FFS-Gold Pinnacles Bed, Permit Area C–B–5, includes the area within a radius of 0.25 nm of a point at 23°55.0' N. lat., 165°23.11' W. long.

* * * * *

(3) Refugia. Westpac Bed, Permit Area R–1, includes the area within a radius of 2.0 nm of a point at 23°18' N. lat., 162°35' W. long.

* * * * *

3. In § 660.82, paragraph (c) introductory text is revised to read as follows:

§ 660.82 Prohibitions.

* * * * *

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 660.86 unless:

* * * * *

4. Section 660.86 is revised to read as follows:

§ 660.86 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

(1) An exemption permitting a person to hand harvest from any precious coral permit area black coral that has attained a minimum base diameter of 3/4 inch (1.91 cm), measured on the widest portion of the stem at a location just above the holdfast, will be issued to a person who had made a landing of black coral that is documented by the State of Hawaii, Department of Land and Natural Resources, within 5 years before the effective date of the final rule.

(2) A person seeking an exemption under this section must submit a letter requesting an exemption to the NMFS Pacific Islands Area Office.

5. Section 660.88 is revised to read as follows:

§ 660.88 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

6. Table 1 to Part 660 is revised to read as follows:

TABLE 1 TO PART 660—QUOTAS FOR PRECIOUS CORALS PERMIT AREAS

Name of coral bed	Type of bed	Harvest quota	Number of years
Makapuu (Oahu)	Established	P–2,000 kg	2
		G–Zero (0 kg)	n/a
		B–500 kg	2
Keahole Point (Hawaii)	Conditional	P–67 kg	1
		G–20 kg	1
		B–17 kg	1
Kaena Point (Oahu)	Conditional	P–67 kg	1
		G–20 kg	1
		B–17 kg	1
Brooks Bank (NWHI)	Conditional	P–200 kg	1
		G–Zero (0 kg)	n/a
		B–111 kg	1
180 Fathom Bank (NWHI)	Conditional	P–222 kg	1
		G–67 kg	1
		B–56 kg	1
FFS-Gold Pinnacles Bed (NWHI)	Conditional	P–Zero (0 kg)	n/a
		G–Zero (0 kg)	n/a
		B–Zero (0 kg)	n/a
Westpac Bed (NWHI)	Refugium	Zero (0 kg)	n/a
Hawaii, American Samoa, Guam, U.S. Pacific Island possessions	Exploratory	X–1,000 kg (all species combined except black corals) per area.	1

[1] Types of corals: P=Pink G=Gold B=Bamboo
[2] No authorized fishing for coral in refugia.

[FR Doc. 00–22667 Filed 9–1–00; 8:45 am]
BILLING CODE: 3510–22 –S

Notices

Federal Register
Vol. 65, No. 172
Tuesday, September 5, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 29, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Agricultural Foreign Investment Disclosure Act Report.

OMB Control Number: 0560–0097.

Summary of Collection: The Agricultural Foreign Investment Disclosure Act (AFIDA) requires foreign investors to report in a timely manner all held, acquired, or transferred U.S. agricultural land to the U.S. Department of Agriculture (USDA). Authority for the collection of the information was delegated by the Secretary of Agriculture to the Farm Service Agency (FSA). Foreign investors may obtain form FSA–153, AFIDA Report, from their local FSA county office or from the FSA Internet site. Investors are required to file a report within 90 days of the acquisition, transfer, or change in the use of their land.

Need and Use of the Information: The information collected from the AFIDA Reports is used to monitor the effect of foreign investment upon family farms and rural communities and in the preparation of a voluntary report to Congress and the President. Congress reviews the report and decides if regulatory action is necessary to limit the amount of foreign investment in U.S. agricultural land. If this information was not collected, USDA could not effectively monitor foreign investment and the impact of such holdings upon family farms and rural communities.

Description of Respondents: Business or other for-profit; Individuals or households; Farm.

Number of Respondents: 4,375.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,108.

Farm Service Agency

Title: Sugar Payment-In-Kind (PIK) Program.

OMB Control Number: 0560–NEW.

Summary of Collection: Due to historically low prices for sugar combined with high government inventories, the Secretary of Agriculture has directed the Farm Service Agency (FSA) to implement a Sugar Payment-In-Kind (PIK) Diversion Program. The purpose of this program is to help restore balance to the sugar market, reduce the amount of forfeitures otherwise expected, and eliminate the Commodity Credit Corporation's (CCC) sugar inventory, thereby also eliminating storage costs. In order to participate in the program, sugar producers will submit bids indicating the dollar value of CCC sugar that they are willing to accept to divert acres from production. Producers will submit the required bid information on form FSA–744. This form will also serve as the contract between the CCC and the producer if their bid is accepted.

Need and Use of the Information: FSA will use the information collected to determine which sugar producers are eligible to participate in the Sugar PIK Program. If the information is not collected, FSA would not have a basis for evaluating which sugar bids to accept.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 6,654.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 3,327.

Agency is requesting an emergency approval by 8/21/00.

Risk Management Agency

Title: Dairy Options Pilot Program (DOPP), Round 2.

OMB Control Number: 0563–0058.

Summary of Collection: Risk Management Agency (RMA) request approval for a regular submission as a result of expansion and changes of the pilot program. Section 191 of the Federal Agricultural Improvement and Reform Act of 1996 authorizes the Secretary of Agriculture to conduct a pilot program for one or more agricultural commodities to determine the feasibility of the use of futures and options as risk management tools to protect producers from fluctuations in prices, yield and income.

The objective of Dairy Options Pilot Program (DOPP) is to ascertain whether put options can provide dairy producers with an effective risk management tool by providing reasonable protection from volatile dairy prices. A put option is a contract traded on eligible markets that gives the buyer the right but not the obligation to sell the underlying futures contact at the strike price on or before an established expiration date. Forms will be used to collect the information.

Need and Use of the Information: RMA will analyze the data and information collected in order to evaluate and recommend changes to the

DOPP in a report should it be decided to make a dairy options program a permanent program for dairy producers. The information collected by RMA will be used to establish producer eligibility; to verify compliance of participating producers and brokers, and evaluating the effectiveness of put options as a risk management tool for dairy farmers.

Description of Respondents: Individuals or households; Farms; Business or other for-profit; Federal Government.

Number of Respondents: 6,150.

Frequency of Responses: Recordkeeping; Reporting: Semi-annually and as funds permit.

Total Burden Hours: 31,701.

Rural Housing Service

Title: 7 CFR Part 1924–A, Planning and Performing Construction and Other Development.

OMB Control Number: 0575–0042.

Summary of Collection: The Rural Housing Service (RHS) is the credit Agency for rural housing and community development within the Rural Development mission area of the United States Department of Agriculture. RHS offers a supervised credit program to build modest housing and essential community facilities in rural areas. Section 501 of Title V of the Housing Act of 1949, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, farm buildings and/or related facilities to provide decent, safe sanitary living conditions and adequate farm building and other structures in rural areas. RHS will collect information using several forms.

Need and Use of the Information: RHS will collect information to determine whether a loan/grant can be approved, and to ensure that RHS has adequate security for the loans financed. The information will be used to monitor compliance with the terms and conditions of the Agency loan/grant and to monitor the prudent use of Federal funds. If the information is not collected and submitted, RHS would have no control over the type and quality of construction and development work planned and performed with Federal funds.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms.

Number of Respondents: 25,340.

Frequency of Responses: Recordkeeping; Report: On occasion.

Total Burden Hours: 94,924.

Rural Housing Service

Title: 7 CFR 1956–C, Debt Settlement—Community and Business Programs.

OMB Control Number: 0575–0124.

Summary of Collection: Rural Housing Service (RHS) request an extension of currently approve information collection 7 CFR part 1956, subpart C Debt Settlement-Community and Business Programs. This subpart delegates authority, prescribes policies and procedures for the debt settlement in connection with Community Facility loans and grants, Water and Waste Disposal Systems loans; direct Business and Industry loans, Indian Tribal Land Acquisition loans, Irrigation and Drainage, and shift-in-Land use loans.

Rural Development including RHS, the Rural Business—Cooperative Service (RBS), the Rural Utilities Service (RUS) and the Farm Service Agency (FSA) are the credit agencies for agricultural and rural development for the United States Department of Agriculture. They offer supervised credit to develop, improve and operate family farms, modest housing, essential community facilities, and business and industry across rural America.

Need and Use of the Information: The debt settlement program provides the delinquent client with an equitable tool for the compromise, adjustment, cancellation, or charge-off of a debt owed to the Agency. The information collected is similar to that required by a commercial lender in similar circumstances. The field offices will collect information from applicants, borrowers, consultants, lenders, and attorneys. Failure to collect the information could result in improper servicing of these loans.

Description of Respondents: Not for profit institutions; Individuals, Households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 16.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 880.

Rural Business—Cooperative Service

Title: CFG 1942—G "Rural business Enterprise Grants and Television Demonstration Grants".

OMB Control Number: 0570–0022.

Summary of Collection: Rural Business Cooperative Service (RBS) request an extension for a currently approved information collection in support of the program for 7 CFR Part 1942–G Rural Business Enterprise Grants and Television Demonstration Grants (TDG). TDG are available to statewide, private nonprofit, public television systems to provide information on agriculture and other issues of importance to farmers and other rural residents.

This regulation covers the operation of this program and includes provisions to remove pass through grants as an eligible use of grants in connection with technical assistance, provisions that the amount funded for a project will not be subject to a dollar limitation, and specific eligibility requirements to determine how RBS evaluates the information.

Need and Use of the Information: RBS will use this information to determine (1) eligibility; (2) the specific purposes for which grant funds will be utilized; (3) time frames or dates by which actions surrounding the use of funds will be accomplished; (4) who will be carrying out the purposes for which the grant is made; (5) project priority; (6) applicants experience in administering a rural economic development program; (7) employment improvement; and (8) mitigation of economic distress of a community through the creation or salvation of jobs or emergency situations. If the information were not collected, RBS would not be able to determine the eligibility of applicant(s) for the authorized purposes. Collecting this information infrequently would have an adverse effect on the Agency's ability to administer the grant program.

Description of Respondents: Individuals or households; Farms; Business or other for profit; Federal Government.

Number of Respondents: 720.

Frequency of Responses: Recordkeeping; Reporting: Monthly; On Occasion; Quarterly.

Total Burden Hours: 40,650.

Food and Nutrition Service

Title: WIC Program Regulations—Reporting and Recordkeeping Burden.

OMB Control Number: 0584–0043.

Summary of Collection: The WIC Program is authorized by the Child Nutrition Act of 1966, as amended, and is administered by State and local health departments in accordance with WIC Program regulations at 7 CFR Part 246. State Plans are used by the Food and Nutrition Service (FNS) as the principal source of information that shows how each State agency WIC Program operates.

Need and Use of the Information: FNS will collect information to determine eligibility for program applicants; ensure appropriate and efficient management of the program; evaluate vendor trends and assess State agency efforts to control vendor fraud and abuse. The information collected is used

by FNS to manage, plan, evaluate and account for Government resources. If the information were not collected the effectiveness of the program would be jeopardized, program funds would be improperly used and the Department and State agencies would be out of compliance with Federal laws.

Description of Respondents: State, Local, or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 7,642,801.

Frequency of Responses: Recordkeeping; Report: Semi-annually; Annually.

Total Burden Hours: 2,568,107.

Sondra Blakey,

Departmental Clearance Officer.

[FR Doc. 00–22580 Filed 9–1–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of Small and Disadvantaged Business Utilization; Federal Subcontracting Workshop

AGENCY: U.S. Department of Agriculture (USDA), Office of Small and Disadvantaged Business Utilization.

ACTION: Notice of meeting.

SUMMARY: The Office of Small and Disadvantaged Business Utilization (OSDBU) at the U.S. Department of Agriculture (USDA) will hold a Federal Subcontracting Workshop on Thursday, October 12, 2000, from 9:00 AM to 4:00 PM in Room 107–A of the Jamie L. Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250–9501. Attendance at the workshop is open to representatives from large business concerns, small business concerns and non-profit organizations.

The workshop will be devoted to the Small Disadvantaged Business (SDB) Program as it relates to Subcontracting. An update on the HUBZone Program and new subcontracting requirements will also be covered at the workshop.

Presentation topics include Key Procurement Initiatives; the Small Business Administration's (SBA) Role in Subcontracting; the Small Disadvantaged Business (SDB) Reform as it Relates to Subcontracting (SDB Certification, SDB Participation Program, SDB Targets for Authorized Subcontracts); SDB Procurement Mechanisms including the Subcontracting Evaluation Factor for SDB Participation and Monetary Subcontracting Incentives; Subcontract Reporting (SF–294, SF–295, Annual SDB Supplemental Report, and Other Reporting Requirements); An Update on the HUBZone Program, the New North American Industry Classification (NAIC) Codes; New Subcontracting Requirements for Veterans; the Federal Procurement Data System (FPDS)—the Need for Accurate Data, Uses for the Procurement Data, Input of SF–295 Data; the Role of the Commercial Market Representative (CMR)—How the CMR Assists Prime Contractors; An Update on SBA's PRO-Net System; and an Update on USDA's Subcontracting Program.

Ms. Linda Oliver, Associate Administrator, Procurement Law and Legislation, U.S. Office of Federal Procurement Policy (OFPP), and Mr. Robert Taylor, Manager of the Federal Subcontracting Program at the U.S. Small Business Administration (SBA), will be among the guest speakers.

Confidential and proprietary information will not be discussed at the workshop. Seating at the workshop is limited, and reservations are required. Reservations will be taken on a first-come, first-served basis.

DATES: Reservations must be made by September 25, 2000 (fax or e-mail only).

ADDRESSES: Confirm by facsimile at (202) 720–3001. Confirm by e-mail at janet.baylor@usda.gov.

FOR FURTHER INFORMATION CONTACT: Loretta D'Amico, USDA/OSDBU, 1400 Independence Avenue, SW, AG STOP 9501, Washington, DC 20250–9501, telephone: (202) 720–7117, or visit the OSDBU Home Page on the Internet at www.usda. gov/osdbu under the What's New Section. If you or a representative from your company is disabled and need special accommodations to participate in the event, please notify Loretta D'Amico at (202) 720–7117 (v) or through the Federal Information Relay Service at 1–800–877–8339 (voice/tdd) by September 25, and the accommodations will be provided.

J. Michael Green,

Deputy Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 00–22505 Filed 9–1–00; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. ST–00–10]

Plant Variety Protection Board; Notice of Teleconference

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Plant Variety Protection Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES: September 14, 2000.

TIME: 12:00 noon, EDT.

LOCATION: USDA's Agricultural Marketing Service Conference Room, Room 3501, South Building, 1400 Independence Avenue, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ann Marie Thro, Commissioner, Plant Variety Protection Office (PVPO), Science & Technology, AMS, USDA. Address: Room 500, National Agricultural Library Building, 10301 Baltimore Blvd., Beltsville, MD 20705–2351, (301) 504–5518 or -7475, or fax: (301) 504–5291.

SUPPLEMENTARY INFORMATION: The Plant Variety Protection Board is authorized under section 7 of the Plant Variety Protection Act (7 U. S. C. 2327). The Board advises the Secretary of Agriculture on rules and regulations implementing the Act. On September 14, 2000, the Board will conduct a teleconference to discuss improving the Plant Variety Protection Office Application Process and other related topics.

The tentative agenda for the teleconference meeting includes: (1) Welcome and opening remarks; (2) Action on general recommendations from Board minutes of March 23, 2000 meeting; (3) Establishment of a subcommittee to address specific recommendations to study and enhance efficiency and cost-effectiveness of PVPO procedures; and (4) Adjournment.

The public may attend the teleconference at the following address: USDA's Agricultural Marketing Service Conference Room, Room 3501, South Building, 1400 Independence Avenue, SW, Washington D.C. Persons who wish to attend should contact the PVPO at 301–504–5518. Minutes of the teleconference will be available for public review 30 days following the meeting at the PVPO, Room 500, National Agricultural Library Building, 10301 Baltimore Blvd., Beltsville, MD 20705–2351, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The minutes will also be posted on the Internet web site *http://www.*ams.usda.gov/science/pvp.htm.

Dated: August 29, 2000.

Michael D. Fernandez,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 00–22578 Filed 9–1–00; 8:45 am]

BILLING CODE 3410–02–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: Commission on Civil Rights

DATE AND TIME: Friday, September 15, 2000, 9:30 a.m.

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

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of July 21, 2000 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Arkansas and Oklahoma
VI. Funding Federal Civil Rights Enforcement Report
VII. "Sharing the Dream: Is ADA Accommodating ALL?" Report
VIII. Future Agenda Items

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

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–22840 Filed 8–31–00; 3:56 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC 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).

Agency: Emergency Steel Loan Guarantee Board.

Title: Emergency Steel Loan Guarantee Program—Guarantee Agreement.

Form Number(s): ELB–1.

Agency Approval Number: 3004–0001.

Type of Request: Extension of a currently approved collection.

Burden: 1,475.

Number of Respondents: 23.

Avg Hours Per Response: 80.

Needs and Uses: The Emergency Steel Loan Guarantee 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 for as long as the guarantee agreement is in effect.

Affected Public: Business or other for profit.

Frequency: On occassion.

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

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

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dave Rostker, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 29, 2000.

Madeleine Clayton,

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

[FR Doc. 00–22593 Filed 9–1–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC 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).

Agency: Emergency Oil and Gas Guarantee Loan Board.

Title: Emergency Oil and Gas Guarantee Loan Program—Guarantee Agreement.

Form Number(s): ELB–1.

Agency Approval Number: 3003–0001.

Type of Request: Extension of a currently approved collection.

Burden: 1,475.

Number of Respondents: 23.

Avg Hours Per Response: 80.

Needs and Uses: The Emergency Oil and Gas Guarantee 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 for as long as the guarantee agreement is in effect.

Affected Public: Business or other for profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits

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

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClaytonl@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dave Rostker, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 29, 2000.

Madeleine Clayton,

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

[FR Doc. 00–22594 Filed 9–1–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Program Dynamics—2001

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 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 November 6, 2000

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael McMahon, Census Bureau, FOB 3, Room 3375, Washington, DC 20233–0001, (301) 457–1616.

SUPPLEMENTARY INFORMATION:

I. Abstract

The SPD is a household-based survey designed as a data collection vehicle that can provide the basis for an overall evaluation of how well welfare reforms are achieving the aims of the Administration and the Congress and meeting the needs of the American people.

The SPD is a large, longitudinal, nationally-representative study that measures participation in welfare programs, including both programs that are being reformed and those that remain unchanged. The SPD measures other important social, economic, demographic, and family changes that will allow analysis of the effectiveness of the welfare reforms.

With the August 22, 1996, signing of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub L. 104–193), the Census Bureau is required to conduct the SPD, using as the sample the households from the 1992 and 1993 Survey of Income and Program Participation (SIPP). The information obtained will be used to evaluate the impact of this law on a sample of previous welfare recipients and future recipients of assistance under new state programs funded under this law as well as assess the impact on other low-income families. Issues of particular attention include welfare dependency, the length of welfare spells, the causes of repeat welfare spells, educational enrollment and work training, health care utilization, out-of-wedlock births, and the status of children.

The 2001 SPD is the fourth year of data collection using the same core questions. The inclusion of an adolescent self-administered questionnaire is also planned. In the 2000 SPD, a one-time topical module collected the residential histories of children. The 1999 SPD collected core data plus extended measures of child well-being. The 1998 SPD included an adolescent self-administered questionnaire similar to the one planned for 2001. A bridge survey using the Current Population Survey March questionnaire was conducted in the spring of 1997 to provide a link to baseline data for the period prior to the implementation of the welfare reform activities.

II. Method of Collection

The SPD is a longitudinal study of welfare-related activities with the sample respondents originally selected from 1992 and 1993 SIPP panels. Interviews were conducted in 1997, 1998, 1999, and 2000. Subsequent data collections are scheduled for 2001 and 2002. Data are collected using a computer-assisted interviewing (CAI) instrument from a nationally representative sample of the noninstitutionalized resident population living in the United States for all individuals, families, and households. Individuals who are at least 15 years of age at the time of the interview will be eligible to be in the survey. A separate paper interview will be obtained for each adolescent member, ages 12+, of the sample households. The adolescent interview is administered either by audio cassette, while the adolescent records the answers in a paper answer booklet or by a field representative asking the questions using a paper questionnaire.

A small sample of households is scheduled for reinterview. The reinterview process assures that all households were properly contacted and that the data are valid.

III. Data

OMB Number: 0607–0838.

Form Number: CAI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 52,000 household respondents; 9,600 adolescent respondents; 1,500 reinterview respondents.

Estimated Time Per Response: 30 minutes per respondent; 30 minutes per adolescent, aged 12+ years; 10 minutes per reinterview.

Estimated Total Annual Burden Hours: 31,050.

Estimated Total Annual Cost: No costs to the respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182; and Title 42, United States Code, Section 614 (Public Law 104–193, Section 414, signed August 22, 1996).

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 are summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 28, 2000.

Madeleine Clayton,

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

[FR Doc. 00–22595 Filed 9–1–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–805]

April 2000 Sunset Reviews; Correction to Final Result and Revocation

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

ACTION: Notice of Correction to April 2000 Sunset Reviews; Final Result and Revocation.

SUMMARY: On July 7, 2000, the Department of Commerce ("the Department") published in the **Federal Register** the final results of the sunset review of the antidumping duty order on pure magnesium from Russia.[1] Subsequent to the publication of the final results, we identified an error in the "Effective Date of Revocation" section of the notice. Therefore, we are correcting and clarifying this error.

The error lies in the first sentence of the section: "Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the

[1] *See April 2000 Sunset Reviews; Final Results and Revocation*, 65 FR 41944 (July 7, 2000).

suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000" This sentence should be replaced with: "Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse effective, May 12, 2000, the fifth anniversary of the date of publication of the order." [2]

EFFECTIVE DATE: May 12, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230: telephone (202) 482–5050.

This correction is issued and published in accordance with sections 751(h) and 777(i) of the Act.

Dated: August 29, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–22677 Filed 9–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Stolz at (202) 482–4474 or Howard Smith at (202) 482–5193, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the preliminary results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On January 26, 2000, the Department published a notice of initiation of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China, covering the period December 1, 1998 through November 30, 1999 (65 FR 4228). The preliminary results are currently due no later than September 1, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than December 30, 2000. *See* Decision Memorandum from Thomas F. Futtner to Holly A. Kuga, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 24, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–22678 Filed 9–1–00; 8:45 am]

BILLING CODE 3510–05–M

[2] *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russion Federation ond Ukraine; Notice of Amended Finol Determinotion of Soles at Less Than Foir Value: Antidumping Duty Investigation of Pure Mognesium From the Russion Federation,* 60 FR 25691 (May 12, 1995).

DEPARTMENT OF COMMERCE

Internaticnal Trade Administration

[A–570–835; A–549–812]

Furfuryl Alcohol From the People's Republic of China and Thailand; Final Results of Antidumping Duty Sunset Revlews

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

ACTION: Notice of final results of antidumping duty sunset reviews: Furfuryl Alcohol from the People's Republic of China and Thailand.

SUMMARY: On May 1, 2000, the Department of Commerce (the "Department") published the notice of initiation of sunset review of the antidumping duty orders on furfuryl from the People's Republic of China ("PRC") and Thailand (65 FR 25309). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response from respondent interested parties, we determined to conduct expedited sunset reviews. Based on our analysis of the comments received, we find that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–5050 or (202–482–3330).

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3— *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

Background

On May 1, 2000, the Department initiated sunset reviews of the antidumping duty orders on furfuryl alcohol from the PRC and Thailand (65 FR 25309), pursuant to section 751(c) of the Act. On May 16, 2000, the Department received Notices of Intent to Participate, in each sunset review of these orders, on behalf of Penn Specialty Chemicals, Inc. ("Penn"), within the deadline specified in 19 CFR 351.218(d)(i). On May 31, 2000, the Department received substantive responses in each sunset review of these orders, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i), on behalf of Penn. Penn claimed in its substantive response to these sunset reviews that it is a manufacturer of the domestic like product and therefore, is an interested party pursuant to section 771(9)(C) of the Act. Further, in its response to the notice of initiation on furfuryl alcohol from the PRC, Penn asserts that it purchased the furfuryl operation of QO Chemical, Inc., the petitioner in the original investigation. *See* Penn's, May 31, 2000, Substantive Response at 3.

On June 7, 2000, the Department received a substantive response to the notice of initiation from respondent interested parties from the PRC: Sinochem International Furan Chemicals Co., Ltd., Shangong Zhucheng Chemical Co., Ltd., Shandong Baofeng Chemicals Group Corp., Linzi Organic Chemical Inc., Jilin Sanchun Chemical Plant Co. Ltd., Sinochem Hebei Fuheng Co., Ltd., Shanxi Province Gaoping Chemical Industry Co., Ltd., Qingdao Import and Export Corp., Tieling North and the China Chamber of Commerce of Metals, Minerals, and Chemicals (collectively, "respondent interested parties").[1]

On May 19, 2000, the Department received notice of waiver of participation in the sunset review on furfuryl alcohol from Thailand, on behalf of Indo-Rama Chemicals (Thailand) Ltd., pursuant to 351.218(d)(2)(i) of the Department's regulations.

With respect to the antidumping duty order on furfuryl alcohol from the PRC, the respondent interested parties note that, of the eight companies participating in this review, only two companies, Shandong Zhucheng and Linzi Organiz participated in the original antidumping duty investigation. The respondent interested parties note that Qingdao Import & Export is a different company from the Quingdao participated in the investigation, and that Qingdao's furfuryl alcohol division is an independent operation called Qingdao on Billion International. Further, they note that Sinochem Furan was formed two years ago, and includes the assets of the Sinochem Shandong, a company that participated in the original investigation.[2] Shandong, Hebei, Sanchun, Shanxi, and Linzi are producers and exporters of furfuryl alcohol from the PRC to the United States, and Sinochem Furan, Qingdao, and Teiling are exporters of furfuryl alcohol from the PRC. *See* Respondent Interested Parties, Supplement to Response, June 16, 2000, at 3. Therefore, the respondent interested parties assert that all these companies qualify as interested parties under section 771(9)(A) of the Act.

On June 21, 2000, the Department notified the Commission that the respondent interested parties did not provide an adequate response in these sunset reviews, pursuant to section 751(c)(3)(B) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2). Therefore, because we did not receive adequate responses from respondent interested parties in each of the two cases, we determined to conduct expedited sunset reviews and to issue the final results not later than August 29, 2000, (120 days after the date of publication in the **Federal Register** of the notice of initiation). We have addressed the interested parties' comments below.

Scope of Reviews

The merchandise covered in these reviews is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to these orders are classifiable5 under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Analysis of Comments Received

All issues raised by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated August 29, 2000, which is adopted by this notice. The issues discussed in the Department's Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 of the Central Records Unit of the Department's main building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://www.ia.ita.doc.gov* under the headings "PRC" and "Thailand." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty orders on furfuryl alcohol from the PRC and Thailand would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturer/producer/exporter	Margin (percent)
China:	
Quingdao Chemicals & Medicines Import and Export Corporation	50.43

[1] On May 30, 2000, the Department received a request for a one-week extension of the deadline for filing substantive comments on behalf of respondent interested parties, China Chamber of Commerce of Metals, Minerals, and Chemicals. The Department granted the extension for all participants eligible to file substantive comments in this sunset review until June 7, 2000.

On June 6, 2000, China Chamber of Commerce of Metals, Minerals, and Chemicals, submitted a request to the Department to amend their list of entry of appearance. The new list includes: Sinochem International Furan Chemicals Co., Ltd., Shangong Zhucheng Chemical Co., Ltd., Shandong Baofeng Chemicals Group Corp., Linzi Organic Chemical Inc., Jilin Sanchun Chemical Plant Co. Ltd., Sinochem Hebei Fuheng Co., Ltd., Shanxi Province Gaoping Chemical Industry Co., Ltd., Qingdao Import and Export Corp.

On June 6, 2000, the Department received a request for a further extension to file additional information in the substantive response on behalf of respondent interested parties: Sinochem International Furan Chemicals Co., Ltd., Shangong Zhucheng Chemical Co., Ltd., Shandong Baofeng Chemicals Group Corp., Linzi Organic Chemical Inc., Jilin Sanchun Chemical Plant Co. Ltd., Sinochem Hebei Fuheng Co., Ltd., Shanxi Province Gaoping Chemical Industry Co., Ltd., Qingdao Import and Export Corp., and the China Chamber of Commerce of Metals, Minerals, and Chemicals. The Department granted the extension to respondent interested parties to file additional information to their June 7, 2000, substantive response of the sunset review on furfuryl alcohol from the PRC until not later than June 16, 2000. See letter to Bruce Aitken, Attorney, Aitken, Irvin, Lewin, Berlin, Vrooman, & Cohn, LLP., from James P. Maeder, Office of Policy, Import Administration.

[2] See Respondent Interested Parties, June 16, 2000, Supplement Filing to Response at 11.

Manufacturer/producer/exporter	Margin (percent)
Sinochem Shandong Import and Export Corporation	43.54
All Others	45.27
Thailand:	
Indo-Rama Chemicals Ltd. (Thailand)("IRCT")	7.82
All Others	7.82

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Timely 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 violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: August 29, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–22676 Filed 9–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–823]

Stainless Steel Plate in Coils from Italy; Rescission of Countervailing Duty Administrative Review

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

ACTION: Notice of Rescission of the First Countervailing Duty Administration Review.

SUMMARY: In response to a May 31, 2000, request made by Acciai Speciali Terni S.p.A, a producer/exporter of stainless steel plate in coils from Italy, on July 7, 2000 (65 FR 41944), the Department of Commerce published the initiation of an administrative review of the countervailing duty order on stainless steel plate in coils from Italy, covering the period January 1, 1999, through December 31, 1999. This review has now been rescinded as a result of the timely withdrawal of the request for review by Acciai Speciali Terni S.p.A.

EFFECTIVE DATES: September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2239 and (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (Department) regulations refer to 19 CFR part 351 (1999).

Background

On May 11, 1999, the Department published a countervailing duty order on stainless steel plate in coils from Italy (64 FR 25288). On May 31, 2000, Acciai Speciali Terni S.p.A. (AST), an Italian producer/exporter of stainless steel plate in coils, requested an administration review of the countervailing duty order on stainless steel plate in coils from Italy covering the period of January 1, 1999, through December 1, 1999. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on July 7, 2000 (65 FR 41944). On August 3, 2000, AST withdrew its request for review.

Rescission of Review

The Department's regulations, at 19 CFR 351.213(d)(1), provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. AST withdrew its request for an administrative review on August 3, 2000, which is within the 90-day deadline. No other party requested a review of AST's sales. Therefore, the Department is rescinding this administrative review with respect to AST.

This notice also 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 the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: August 29, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–22675 Filed 9–1–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Approval Decision on Puerto Rico Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and The U.S. Environmental Protection Agency.

ACTION: Notice of Intent to Approve the Puerto Rico Coastal Nonpoint Program.

SUMMARY: Notice is hereby given of the intent to fully approve the Puerto Rico Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft Approval Decisions on conditions for the Puerto Rico coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires states and territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal states and territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the Puerto Rico coastal nonpoint program on November 18, 1997. NOAA and EPA have drafted approval decisions describing how Puerto Rico has satisfied the conditions placed on its program and therefore has a fully approved coastal nonpoint program.

NOAA and EPA are making the draft decisions for the Puerto Rico coastal nonpoint program available for a 30-day public comment period. If no comments are received, the Puerto Rico program

will be approved. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the program.

Copies of the draft Approval Decisions can be found on the NOAA web site at http://www.ocrm.nos.noaa.gov/czm/ or may be obtained upon request from: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. 301–713–3121, extension 201, e-mail joseph.flanagan@noaa.gov.

DATES: Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by October 5, 2000.

ADDRESSES: Comments should be made to Joseph A. Uravitch, Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, tel. 301–713–3155 extension 195, e-mail joseph.uravitch@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Josh Lott, Coastal Program Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. 301–713–3155, extension 178, e-mail josh.lott@noaa.gov or Katie Lynch, EPA Region 2—2WMWSP, Water Programs Branch, 24th Floor, 290 Broadway, New York, NY 10007, tel. 212–637–3840, e-mail lynch.katie@epa.gov.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

J. Charles Fox,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 00–22627 Filed 9–1–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072100A]

Taking and Importing of Marine Mammals

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

ACTION: Notice of changes in status of intermediary nations.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) made changes in the intermediary nation status for the Governments of Costa Rica, Italy, and Japan under the Marine Mammal Protection Act (MMPA) on August 19, 2000. This allows the importation into the United States from these nations of yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) after March 3, 1999. The change in intermediary nation status is based on the lack of sufficient documentary evidence that Costa Rica, Japan, or Italy import yellowfin tuna or tuna products from nations subject to a direct ban under the MMPA. This determination remains in effect until the Assistant Administrator has sufficient evidence that a nation is importing yellowfin tuna or tuna products subject to a direct ban under the MMPA.

DATES: Effective August 19, 2000.

ADDRESSES: Copies of this notice may be obtained by writing to Nicole R. Le Boeuf, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, Maryland 90210.

FOR FURTHER INFORMATION CONTACT: Nicole R. Le Boeuf; Phone 301-713-2322; Fax 301-713-4060.

SUPPLEMENTARY INFORMATION: NMFS imposed the current intermediary nation embargoes as a result of a court order dated February 3, 1992 by Judge Thelton Henderson of the U.S. District Court for the Northern District of California. NMFS was ordered to impose embargoes on certain intermediary nations under section 101(a)(2)(C) of the MMPA. At that time, section 101(a)(2)(C) mandated that NMFS and the U.S. Customs Service ". . . require the government of any intermediary nation, from which yellowfin tuna or yellowfin tuna products will be exported to the United States to certify and provide reasonable proof..." Based on the phrase "from which yellowfin tuna or yellowfin tuna products will be exported", Judge Henderson determined that Congress had intended the scope of the intermediary nation embargoes to cover "all yellowfin tuna and tuna products." *Earth Island Institute* v. *Mosbacher* 785 F. Supp. 826, 833 (N. D. Cal. 1992)

On November 2, 1992, after Judge Henderson's decision, Congress amended the MMPA and revised paragraph 101(a)(2)(C) to require that an intermediary nation "...certify and provide reasonable proof to the Secretary that it has not imported, within the preceding 6 months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States under subparagraph (B)." (from Pub. L. 102-582)

Under the current intermediary nation embargo provisions (which the International Dolphin Conservation Program Act (IDCPA) recodified as section 101(a)(2)(B)), an intermediary embargo applies only to that yellowfin tuna harvested by purse seine in the ETP. The regulations to implement the IDCPA also specify that the intermediary and primary nation embargoes apply only to yellowfin tuna harvested by purse seine vessels greater than 400 short tons carrying capacity in the ETP. Although NMFS had sufficient evidence to determine these nations to be intermediary nations under the original standard as interpreted in Judge Henderson's ruling, the evidence was not sufficient to indicate that Costa Rica, Japan, and Italy were intermediary nations under the amended definition.

This action removes the intermediary nation status of Costa Rica, Italy, and Japan, which have been embargoed since January 31, 1992. This change in intermediary nation status is based on the lack of sufficient documentary evidence that Costa Rica, Japan, or Italy import, or have ever imported, yellowfin tuna or tuna products from nations subject to a direct ban under section 101(a)(2)(B) of the MMPA. This determination remains in effect for these nations until NMFS has sufficient evidence that they are importing yellowfin tuna or tuna products subject to the direct ban.

The MMPA, 16 U.S.C. 1361 *et seq.*, as amended by the IDCPA (Pub. L. 105-42), prohibits the entry into the United States of yellowfin tuna and tuna products from "intermediary nations." An intermediary nation is a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B) of the MMPA. The Assistant Administrator for Fisheries, NMFS, will review the status of intermediary nation determinations at the request of such nations or if the Assistant Administrator otherwise has evidence that a nation is importing yellowfin tuna or tuna products subject to a direct ban under section 101(a)(2)(B) of the MMPA. Such requests must be accompanied by specific and detailed supporting

information or documentation indicating that a review or reconsideration is warranted. If a nation has not imported in the previous 6 months yellowfin tuna or yellowfin tuna products that are subject to a ban on direct importation into the United States under section 101(a)(2)(B), the nation shall no longer be considered an intermediary nation, and these import restrictions shall no longer apply. The status of a nation as an intermediary nation will remain valid until the Assistant Administrator has sufficient evidence that a nation is not importing yellowfin tuna or tuna products subject to a direct ban under section 101(a)(2)(B) of the MMPA. The Assistant Administrator may require the submission of additional supporting documentation or verification of statements made in connection with requests to review or change the status of an intermediary nation.

As a reminder, the interim final regulations implementing the IDCPA (65 FR 30, January 3, 2000) also set forth a mechanism for lifting primary embargoes against nations harvesting yellowfin tuna in the ETP purse seine fishery. Harvesting or exporting nations, if different, must submit documentary evidence directly to the Assistant Administrator and request an affirmative finding as required by 50 CFR 216.24(f)(9). The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the International Dolphin Conservation Program (IDCP). To issue an annual affirmative finding, NMFS must receive the following information:

1. A statement requesting an affirmative finding;
2. Evidence of membership in the Inter-American Tropical Tuna Commission (IATTC);
3. Evidence that a nation is meeting its obligations to the IATTC, including financial obligations;
4. Evidence that a nation is complying with the IDCP. For example, national laws and regulations implementing the Agreement on the IDCP and information that the nation is enforcing those laws and regulations;
5. Evidence of a tuna tracking and verification program comparable to the U.S. tracking and verification regulations at 50 CFR 216.94;
6. Evidence that the national fleet dolphin mortality limits (DMLs) were not exceeded in the previous calendar year;
7. Evidence that the national fleet per-stock per-year mortality limits, if they are allocated to countries, were not exceeded in the previous calendar year;
8. Authorization for the IATTC to release to the Assistant Administrator for Fisheries complete, accurate, and timely information necessary to verify and inspect Tuna Tracking Forms; and
9. Authorization for the IATTC to release to the Assistant Administrator for Fisheries information whether a nation is meeting its obligations of membership to the IATTC and whether a nation is meeting its obligations under the IDCP, including managing (not exceeding) its national fleet DMLs or its national fleet per-stock per-year mortality limits. A nation may opt to provide this information directly to NMFS on an annual basis or to authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

Date: August 25, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–22666 Filed 9–1–00; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082900B]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Squid, Mackerel, and Butterfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Wednesday, September 20, 2000, from 10 a.m. until 5 p.m.

ADDRESSES: This meeting will be held in the Aquarium Conference Center of the NMFS Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA; telephone: 508–495–2373.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to consider in-season adjustment to the 2000 Loligo quota.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 29, 2000.

Richard W. Surdi,

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

[FR Doc. 00–22680 Filed 9–1–00; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Department of Defense Commercial Air Carrier Quality and Safety Review Program

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Office of the Secretary of Defense announces the proposed reinstatement of a public collection and seeks public comment on the provisions thereof. 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 unity; (b) the accuracy of the agency's estimate of the burden proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments by November 6, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the DoD air Carrier and Analysis Office (HQ AMC/DOB), 402 Scott Drive, Unit 3A1, Scott AFB, IL 62225–5302, ATTN: Mr. Larry Elliott.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call HQ AMC/DOB at 618–229–3092.

Title, Associated Form, and OMB Number: DoD Statement of Intent, AMC Form 207, OMB Number 0701–0137.

Needs and Uses: The information collection requirement is necessary to assist the overall evaluation of commercial aircraft to provide quality, safe, and reliable airlift service when procured by the Department of Defense (DoD).

Affected Public: Businesses or other for profit.

Annual Burden Hours: 1,230.

Number of Respondents: 30.

Responses per Respondent: 1.

Average Burden for Respondent: 41 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are commercial air carriers desiring to supply airlift services to DoD. AMC 207 provides vital information from the carriers needed to determine their eligibility to participate in the DoD Air Transportation Program.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–22573 Filed 9–1–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before November 6, 2000.

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

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

Dated: August 29, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: The National Institute on Disability and Rehabilitation Research (NIDRR) Quality of Research Rating Scale.

Frequency: On occasion.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 300

Burden Hours: 100

Abstract: To assess quality of NIDRR funded research, a reliable, valid, and efficient instrument needs to be developed and tested. The attached form will be administered to 300 people. Responses will be analyzed for valididty and reliability. If the results are satisfactory, the form will be used for future quality of research assessment.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jackie Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–22598 Filed 9–1–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management (EM) Site-Specific Advisory Board (SSAB), Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

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

DATES: Saturday, Sept. 16, 2000: 8 a.m.–4 p.m.

ADDRESSES: The Plantation Restaurant, 9660 Dry Fork Road, Harrison, OH 45036.

FOR FURTHER INFORMATION CONTACT: Victoria Spriggs, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310. at (513) 648–6478.

SUPPLEMENTARY INFORMATION:

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

Tentative Agenda: This meeting does not have a standard agenda. Although open to the public, it is a retreat session for board members and ex-officios, and is intended as a time for team-building and alignment. Formal board business will not be conducted and recommendations will not be developed during this time.

Public Participation: This retreat meeting is open to the public. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens Advisory Board, c/o Phoenix Environmental Corporation, MS 76, Post Office Box 538704, Cincinnati, Ohio 45253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on August 30, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–22628 Filed 9–1–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–80–000; FERC Form 80]

Proposed Information Collection and Request for Comments

August 29, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before November 6, 2000.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller&ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 80 "Licensed Hydropower Development Recreation Report" No. 1902–0106) is used by the Commission to implement the statutory provisions of sections 4(a), 10(a), 301(a), 304 and 309 of the Federal Power Act (FPA) (16 U.S.C. 797–825h). The reporting requirements contained in this collection of information are used by the Commission to determine (1) adequacy of existing recreational facilities; (2) the need for additional facilities; (3) the impact of proposed uses of project lands for recreation; (4) if the current information requirements concerning recreational facilities and use of licensed projects. FERC Form 80 data are needed to ensure licensed projects continue to provide for the changing needs in public recreation. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18b CFR part 8.11 and 141.14.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
400	1	3	1200

The estimated total cost to respondents is $66,552 (1200 hours divided by 2,080 hours per employee per year times $115,357 per year average salary (including overhead per employee = $66,552 (rounded off)). The cost per respondent is = $166.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22584 Filed 9–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–423–001, FERC Form No. 423]

Information Collection Submitted for Review and Request for Comments

August 29, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review of the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission, as explained below. The Commission received comments from eighteen entities in response to an earlier **Federal Register** notice of August 20, 1999 (64 FR 45519–20) and has responded to those comments in this submission.

DATES: Comments regarding this collection are best assured of having their full effect if received on or before October 5, 2000.

ADDRESSES: Address comments of Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Commission Desk Officer, 725 17th Street NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street, NE., Washington DC 20426. Mr. Miller may be reached by telephone at (202) 208–1415 and by e-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC Form 423, "Monthly Report of Cost and Quality of Fuels for Electric Plants".

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0024. The Commission is requesting reinstatement, without change, of the previously approved data collection for which approval expired July 31, 2000, and a three-year approval of the collection of data. This is a mandatory information collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing provisions of sections 205–206 of the Federal Power Act as amended by section 208 of the Public Utility Regulatory Policies Act (PURPA).

The Commission uses the information to collect basic cost and quality of fuels data at electric generating plants on the FERC Form 423, and has used such data to conduct fuel reviews, rate investigations and to track market changes and trends in the electric wholesale market. The data is also used by other government agencies to track the supply, disposition and prices of fuel, to conduct environmental assessments, and by electric market participants and the public to assess the competitive market place.

5. *Respondent Description:* The respondent universe currently comprises approximately 209 public utilities. FERC Form 423 collects from every electric power producer having electric generating plants with a rated capacity of 50 megawatts or greater, monthly data on the cost and quality of fuel delivered to each generating plant. There are approximately 636 generating plants.

6. *Estimated Burden:* 11,448 total burden hours, 636 respondents, 12 responses annually, 1.5 hours per response.

Authority: Sections 205–206 of the FPA (16 U.S.C. 824d and e) and section 208, of the Public Utility Regulatory Policies Act (PURPA). (16 U.S.C. 2601 *et. al.*).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22585 Filed 9–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–547–000, FERC–547]

Proposed Information Collection and Request for Comments

August 29, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before November 6, 2000.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–1415, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under FERC–547 "Gas Pipeline Rates: Refund Report Requirements" (OMB No. 1902–0084) is used by the Commission to implement statutory refund provisions governed by sections 4, 5, and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). Sections 4 and 5 authorize the Commission to order a refund, with interest, on any portion of a natural gas company's increased rate or charge found to be not just or reasonable. Refunds may also be instituted by a natural gas company as a stipulation to a Commission-approved settlement agreement or a provision under the company's tariff. Section 16 authorizes the Commission to prescribe the rules and regulations necessary to administer its refund mandates. The Commission's refund and reporting requirements are set forth at sections 154.501 and 154.502 of the Commission's regulations (18 CFR 154.501 and 154.502). The data collected thereunder allows the Commission to monitor the refunds owned by the natural gas companies and to ensure the flow through of the refunds, with applicable interest, to the appropriate customers and ultimately to the residential customers and end users.

Action: The Commission is requesting reinstatement, without change, of the previously approved data collection for which approval expired July 31, 2000, and a three-year approval of the data. This is a mandatory information collection requirement.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
75	1	75	5,625 hours.

The estimated total cost to respondents is $311,963, (5,625 hours divided by 2,080 hours per year per employee times $115,357 [1] per year per average employee=$311,963). The cost per respondent is $3,900.

The reporting burden includes the total time, effort, or financial resources expended by the respondent to assemble and disseminate the information including: (1) Reviewing the instructions; (2) developing or acquiring appropriate technological support systems needed for purposes of collecting, validating, processing, and disseminating the information; (3) administration; and (4) transmitting, or otherwise disclosing the information.

The cost estimate for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necesssary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–22586 Filed 9–1–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–588–000; FERC–588]

Proposed Information Collection and Request for Comments

August 29, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before November 6, 2000.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 588 "Emergency Natural Gas Transportation, Sale and Exchange Transactions" (OMB No. 1902–0144) is used by the Commission to implement the statutory provisions of sections 7(c) of the Natural Gas Act (NGA) (P.L. 75–688) (15 U.S.C. 717–717w) and provisions of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432. Under the NGA, a natural gas company must obtain Commission approval to engage in the transportation, sale or exchange of natural gas in interstate commerce. However, section 7(c) exempts from certificate requirements "temporary acts or operations for which the issuance of a certificate will not be required in the public interest." The NGPA also provides for non-certificated interstate transactions involving intrastate pipelines and local distribution companies.

A temporary operation, or emergency, is defined as any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, or local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to the customer. The natural gas companies file the necessary information with the Commission so that it may determine if the transaction/operation qualifies for exemption. A report within forty-eight hours of the commencement of the transportation, sale or exchange, a request to extend the sixty-day term of the emergency transportation, if needed, and a termination report are required. The data required to be filed for the forty-eight hour report is specified by 18 CFR 284.270.

Action: The Commission is requesting reinstatement, without change, of the previously approved data collection for which approval expired July 31, 2000, and a three-year approval of the collection of data. This is a mandatory information collection requirement.

Burden Statement: Public reporting burden for this collection is estimated as follows:

[1] The cost per year per average employee estimate is based on the annual allocated cost per Commission employee for fiscal year 2001. The estimated $115,357 cost consists of approximately $92,286 in salary and $23,071 in benefits and overhead.

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)X(2)X(3)
15	1	10 hours	150 hours.

The estimated total cost to respondents is $8,319 (150 hours divided by 2,080 hours per employee per year times $115,357 per year average salary (including overhead) per employee = $8,319 (rounded)).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements: (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22587 Filed 9–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–498–00]

Koch Gateway Pipeline Company; Notice of Proposed Changes To FERC Gas Tariff

August 29, 2000.

Take notice that on August 16, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective March 27, 2000 and September 15, 2000.

Tariff Sheets to be Effective March 27, 2000

Third Revised Sheet No. 3600
Third Revised Sheet No. 3601
Fourth Revised Sheet No. 3605
Third Revised Sheet No. 3612

Tariff Sheets to be Effective September 15, 2000

Sixth Revised Sheet No. 3700
Original Sheet No. 3700A
Third Revised Sheet No. 3704

Koch states that the purpose of this filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). Among other things, the Commission in Order No. 637 waived the rate ceiling for short-term capacity release transactions and limited the availability of the right of first refusal to contracts at the maximum tariff rate having a term of twelve consecutive months or longer. On May 19, 2000, the Commission issued order 637–A which modified Order No. 637 to provide the right of first refusal will apply to multi-year seasonal contracts at the maximum rate for services not offered by the pipeline for twelve consecutive months. Accordingly, Koch has modified its tariff to comply with these requirements of Order Nos. 637 and 637A..

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest such 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 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22589 Filed 9–1–00, 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–445–000]

National Fuel Gas Supply Corporation; Notice of Application

August 29, 2000.

Take notice that on August 23, 2000, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 142032, filed in Docket No. CP00–445–000 an application pursuant to section 7(c) of the Natural Gas Act for permission to increase the maximum operating pressure of a compressor and a segment of downstream pipeline in Venango County, Pennsylvania, all as more fully set forth in the application 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/htm (call 202–208–2222 for assistance).

National Fuel proposes to increase the maximum operating pressure of its Henderson Compressor Station from 720 psig to 800 psig and increase the maximum operating pressure of the 4.5-mile segment of Line M located immediately downstream of the station from 720 psig to 1,000 psig to permit it to provide an additional firm transportation service of up to 6,608 dt per day for Columbia Gas Transmission Corporation from Ellwood City, Pennsylvania to Lewis Run, Pennsylvania. It is stated that the pressure increase at Henderson Station will require minor modifications of auxiliary facilities under section 2.55(a) of the Commission's Regulations consisting of replacement of the existing meter tubes with new meter tubes rated for the higher operating pressure. National Fuel further indicates that all work at Henderson Station will be aboveground and that no change will be made to the installed horsepower, nor will there be an increase in the emissions or noise generated by the station. National Fuel also states that the uprating of Line M will be conducted in accordance with applicable regulations of the U.S. Department of Transportation.

Any questions regarding the application should be directed to David W. Reitz, at (716) 857–7949.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 8, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining 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 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 National Fuel to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22583 Filed 9–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–142–026, et al.]

Tractebel Energy Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Tractebel Energy Marketing, Inc.

[Docket No. ER94–142–026]

Take notice that on August 23, 2000, Tractebel Energy Marketing, Inc. (TEMI), a power marketer selling electric power at wholesale pursuant to market based rate authority granted to it by the Federal Energy Regulatory Commission, tendered for a filing a triennial revised market power analysis in compliance with Commission's January 7, 1994 letter order in Docket No. ER94–142.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. MidAmerican Energy Company

[Docket No. ER00–2774–001]

Take notice that on August 23, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Power Sales Agreement dated April 29, 1998, modified by way of a First Amendment to Power Sales Agreement dated April 26, 2000, entered into with the City of Montezuma, Iowa, pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5.

MidAmerican requested and the Director, Division of Tariffs and Rates—Central, approved a June 9, 2000 effective date for the Power Sales Agreement, as amended, subject to MidAmerican making a compliance filing to conform MidAmerican's previous filing in this matter dated June 8, 2000 to be consistent with the necessary filing rate schedule designations as required by Order 614, FERC Stats. & Regs. 31,096 (2000) and Southwest Power Pool Inc., 92 FERC 61,109 (2000). MidAmerican has served a copy of the compliance filing on the City of Montezuma, Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket No. ER00–2383–000]

Take notice that on August 23, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Notice of Implementation, sent to Market Participants and posted on the ISO Home Page on August 22, 2000, which specifies that, effective September 1, 2000, the ISO will implement ten-minute markets.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER00–3464–000]

Take notice that on August 23, 2000, the New England Power Pool (NEPOOL), Participants Committee filed for acceptance materials to terminate the membership of TXU Energy Trading Company (TXU).

At the request of TXU, the Participants Committee seeks an August 1, 2000 effective date for such termination.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER00–3467–000]

Take notice that on August 23, 2000, Alabama Power Company (APC), tendered for filing a Service Agreement for Supply of Electric Service to Electric Membership and Electric Cooperative Corporations under Rate Schedule REA–1 of its First Revised FERC Electric Tariff Original Volume No. 1 (Tariff). Pursuant to that service agreement, APC will provide electric service to Black Warrior Electric Membership Corporation at a new Millwood Delivery Point located in Hale County, Alabama. In addition, APC is refiling the Tariff to comply with the Commission's electric rate schedule designation requirements contained in the Commission's Order No. 614.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. St. Joseph Light & Power Company

[Docket No. ER00–3468–000]

Take notice that on August 23, 2000, St. Joseph Light & Power Company (SJLP), tendered for filing with the Federal Energy Regulatory Commission First Revised Sheet No. 82 to SJLP's open access transmission tariff, which is designated FERC Electric Tariff, First Revised Volume No. 1. SJLP states that the purpose of this filing is to adopt the Mid-Continent Area Power Pool's revised Line Loading Relief procedures approved by the Commission on August 1, 2000, in *Mid-Continent Area Power Pool,* Docket Nos. ER99–2649–001, *et al.*

SJLP requests an effective date of August 1, 2000, for this filing.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER00–3469–000]

Take notice that on August 23, 2000, Commonwealth Edison Company (ComEd), tendered for filing an executed service agreement for short term sales with Public Service Electric and Gas Company (PSE&G) under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests and effective date of August 10, 2000, for the service agreement and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on PSE&G.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–3470–000]

Take notice that on August 23, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company), tendered for filing the Second Revised Service Agreement No. 29 to complete the filing requirement for one (1) new Customer, Dynegy Power Marketing, Inc., of the Market Rate Tariff under which Allegheny Energy Supply offers generation services. The Service Agreement portion of Second Revised Service Agreement No. 29 will maintain the effective date of November 18, 1999, in accordance with the Commission's Basket Acceptance Order at Docket No. ER00–854–000 and the effective date of the Netting Agreement will remain May 24, 2000 in accordance with the Commission's Order at Docket No. ER00–2798–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–3471–000]

Take notice that on August 23, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed unilateral Service Sales Agreement between Companies and Public Service Company of Colorado under the Companies' Rate Schedule MBSS.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Central Illinois Light Company

[Docket No. ER00–3472–000]

Take notice that on August 23, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff reflecting a notice of contract termination from AYP Energy, Inc.

CILCO requested an effective date of August 20, 2000 for the termination notice.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Maine Independent System Administrator, Inc.

[Docket No. ER00–3474–000]

Take notice that on August 23, 2000, Northern Maine Independent System Administrator, Inc. (NMISA), tendered for filing an amendment to its Market Rules, FERC Electric Rate Schedule No. 2.

NMISA requests an effective date of September 1, 2000.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. PPL EnergyPlus, LLC

[Docket No. ER00–3475–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC, tendered for filing a notice of cancellation of Service Agreement No. 90 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Central Vermont Public Service, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Central Vermont Public Service, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PPL EnergyPlus, LLC

[Docket No. ER00–3476–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC, tendered for filing a notice of cancellation of Service Agreement No. 36 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Cinergy Operating Companies.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Cinergy Operating Companies.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PPL EnergyPlus, LLC

[Docket No. ER00–3477–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing

a notice of cancellation of Service Agreement No. 9 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and North American Energy Conservation, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon North American Energy Conservation, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. PPL EnergyPlus, LLC

[Docket No. ER00–3478–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 18 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and NP Energy, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon NP Energy, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. PPL EnergyPlus, LLC

[Docket No. ER00–3479–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 113 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Niagara Mohawk Energy Marketing, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Niagara Mohawk Energy Marketing, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. PPL EnergyPlus, LLC

[Docket No. ER00–3480–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 58 under PPL EnergyPlus. LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Merchant Energy Group of the Americas, Inc.

PPL EnergyPlus, LLC requests an effective date cf this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Merchant Energy Group of the Americas, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. PPL EnergyPlus, LLC

[Docket No. ER00–3481–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 72 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Constellation Power Source, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Constellation Power Source, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. PPL EnergyPlus, LLC

[Docket No. ER00–3482–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 7 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Conectiv Energy Supply.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Conectiv Energy Supply.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. PPL EnergyPlus, LLC

[Docket No. ER00–3483–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 28 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Columbia Power Marketing Corporation.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Columbia Power Marketing Corporation.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. PPL EnergyPlus, LLC

[Docket No. ER00–3484–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 21 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and QST Energy Trading, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon QST Energy Trading, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. PPL EnergyPlus, LLC

[Docket No. ER00–3485–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 35 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Commonwealth Edison Corporation.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Commonwealth Edison Corporation.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. PPL Electric Utilities Corporation

[Docket No. ER00–3486–000]

Take notice that on August 23, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.), tendered for filing a notice of cancellation of Service Agreement No. 13 under PPL Utilities FERC Electric Tariff, First Revised Volume No. 5, between PPL Utilities and First Energy Corporation.

PPL Utilities requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon First Energy Corporation.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. PPL EnergyPlus, LLC

[Docket No. ER00–3487–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 30 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Green Mountain Power.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Green Mountain Power.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. PPL EnergyPlus, LLC

[Docket No. ER00–3488–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 19 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Allegheny Power.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Allegheny Power.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. PPL EnergyPlus, LLC

[Docket No. ER00–3489–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 66 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Aquila Power Corporation.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Aquila Power Corporation.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. PPL EnergyPlus, LLC

[Docket No. ER00–3490–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 24 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and AYP Energy, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon AYP Energy, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. PPL EnergyPlus, LLC

[Docket No. ER00–3491–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 77 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Cinergy Capital & Trading, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Cinergy Capital & Trading, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. PPL EnergyPlus, LLC

[Docket No. ER00–3492–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 14 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Dayton Power and Light Company.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Dayton Power and Light Company.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. PPL Electric Utilities Corporation

[Docket No. ER00–3493–000]

Take notice that on August 23, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.) tendered for filing a notice of cancellation of Service Agreement No. 12 under PPL Utilities FERC Electric Tariff, First Revised Volume No. 5, between PPL Utilities and DTE Energy Trading, Inc.

PPL Utilities requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon DTE Energy Trading, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. PPL EnergyPlus, LLC

[Docket No. ER00–3494–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 69 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Duquesne Light Company.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Duquesne Light Company.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. PPL EnergyPlus, LLC

[Docket No. ER00–3495–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 40 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and NESI Power Marketing, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon NESI Power Marketing, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. PPL EnergyPlus, LLC

[Docket No. ER00–3496–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 42 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Duke Power.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Duke Power.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. PPL EnergyPlus, LLC

[Docket No. ER00–3497–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 15 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and New Energy, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon New Energy, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. PPL EnergyPlus, LLC

[Docket No. ER00–3498—000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 99 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Williams Energy Marketing & Trading Company.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Williams Energy Marketing & Trading Company.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. PPL EnergyPlus, LLC

[Docket No. ER00–3499–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 131 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and NRG Power Marketing, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon NRG Power Marketing, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. PPL EnergyPlus, LLC

[Docket No. ER00–3500–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 22 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Enron Power Marketing, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Enron Power Marketing, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

38. PPL EnergyPlus, LLC

[Docket No. ER00–3501–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 31 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Dynegy Power Marketing Company.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Dynegy Power Marketing Company.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

39. PPL EnergyPlus, LLC

[Docket No. ER00–3502–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 44 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and East Kentucky Power Cooperative, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon East Kentucky Power Cooperative, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

40. PPL EnergyPlus, LLC

[Docket No. ER00–3503–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 8 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Atlantic Electric.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Atlantic Electric.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

41. PPL EnergyPlus, LLC

[Docket No. ER00–3504–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 108 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Select Energy, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Select Energy, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

42. PPL EnergyPlus, LLC

[Docket No. ER00–3505–000]

Take notice that on August 23, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of Service Agreement No. 129 under PPL EnergyPlus, LLC Rate Schedule FERC No. 1, between PPL EnergyPlus, LLC and Morgan Stanley Capital Group, Inc.

PPL EnergyPlus, LLC requests an effective date of this cancellation of October 23, 2000.

Notice of the proposed cancellation has been served upon Morgan Stanley Capital Group, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22582 Filed 9–1–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2203–007 Alabama]

Alabama Power Company; Notice of Availability of Environmental Assessment

August 29, 2000.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental effects of Alabama Power Company's request to amend the license to replace the turbine runner at the Holt Project, located on the Black Warrior River, in Tuscaloosa County, Alabama. The turbine runner replacement would increase the generating and hydraulic capacities of the project.

The EA was written by Staff in the Office of Energy Projects, Federal Energy Regulatory Commission. The proposed upgrade would not constitute major federal action significantly affecting the quality of the human environment. copies of the EA can be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at the Commission's Public Reference Room

located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

Anyone may file comments on the EA. The public, federal and state resource agencies are encouraged to provide comments. All written comments must be filed within 30 days of the issuance date of this notice shown above. Send an original and eight copies of all comments marked with the project number P–2203–007 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. If you have any questions regarding this notice, please contact Steve Kartalia at telephone: (202) 219–2942 or e-mail: *stephen.kartalia@ferc.fed.us*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22588 Filed 9–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–081; Alabama]

Alabama Power Company; Notice of Availability of Draft Environmental Assessment

August 29, 2000.

A draft environmental assessment (DEA) is available for public review. The DEA analyzes the environmental impacts of a request to revise the rule curve and Interim Flood Control Plan (Interim Plan) filed by Alabama Power Company (APC). In its Interim Plan, APC requests approval of a temporary variance to keep water levels in Neely Henry Reservoir higher during the winter. Neely Henry Reservoir is part of the Coosa River Hydroelectric Project. The reservoir is located in Calhoun, St. Clair and Etowah Counties, Alabama. Currently, lake levels must be maintained at elevation 508 msl from May 1 to October 31; drawn down to elevation 505 msl by about November 7 and maintained at this level until about April 15; then raised to elevation 508 msl by April 30. APC proposes to maintain Neely Henry Reservoir at elevation 508 msl from May 1 to September 30; draw down to elevation 507 msl by November 30 and maintain this level until March 31; then raise back up to elevation 508 msl by May 1. This part of the Interim Plan is for Federal Energy Regulatory Commission (Commission) approval.

In its Interim Plan, APC also requests approval of revised reservoir regulation procedures for Neely Henry Reservoir. The regulation procedures are contained in the Department of Army, Mobile District Corps of Engineer's (Corps) Reservoir Regulation Manual and are used by APC to lower the reservoir in anticipation of a flood. The revised regulation procedures are shown in detail in the DEA. This part of the Interim Plan is for Corps approval.

APC would implement its Interim Plan for up to three years during a trial period. At the end of the trial, APC would decide whether to file an application to make the Interim Plan permanent.

The DEA was written by Commission staff in the Office of Energy Projects in cooperation with Corps staff. Commission and Corps staff believe APC's proposed Interim Plan, pending further review as discussed in the DEA, would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the DEA can be viewed on the web at *www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington DC 20426, or by calling (202) 208–1371.

Anyone may file comments on the DEA. The public, federal and state resource agencies are encouraged to provide comments. All comments must be filed within 30 days of the date of this notice shown above. Send an original and eight copies of all comments marked with the project number P–2146–081 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. If you have any questions regarding this notice, please call Steve Hocking at (202) 219–2656.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22622 Filed 9–01–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2661–012]

Pacific Gas and Electric Company; Notice of Availability of Draft Environmental Assessment

August 29, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects staff has reviewed the application for new license for the Hat Creek Hydroelectric Project located on Hat Creek, near the town of Cassel, in Shasta County, California, and has prepared a draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The DEA may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Hat Creek Hydroelectric Project No. 2661–012," to all comments. For further information, please contact David Turner at (202) 219–2844.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22590 Filed 9–1–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6864–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) Programs

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): Information Collection Request for Prevention of Significant Deterioration and Nonattainment New Source Review, EPA ICR Number 1230.10, OMB Control

Number 2060–0003, expiration date September 30, 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 November 6, 2000.

ADDRESSES: Send all comments on this ICR to Ms. Pamela J. Smith, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Interested persons may obtain a copy of the ICR without charge by contacting Ms. Smith at (919) 541–0641 or E-mail "smith.pam@epa.gov" and refer to EPA ICR Number 1230.10.

FOR FURTHER INFORMATION CONTACT: Dennis Crumpler at (919) 541–0871 and E-mail "crumpler.dennis@epa.gov."

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which must submit an application for a permit to construct a new source or to modify an existing source of air pollution, permitting agencies which review the permit applications, and members of the public who are due the opportunity to comment on permitting actions.

Title: Information Collection Request for 40 CFR parts 51 and 52 Prevention of Significant Deterioration and Nonattainment New Source Review, EPA ICR Number 1230.10, OMB Control Number 2060–0003, Expiration date September 30, 2000. This is a request for extension of a currently approved collection.

Abstract: Part C of the Clean Air Act (Act)—"Prevention of Significant Deterioration," and Part D—"Plan Requirements for Nonattainment Areas," require all States to adopt preconstruction review programs for new or modified stationary sources of air pollution. Implementing regulations for State adoption of these two NSR programs into a State Implementation Plan (SIP) are promulgated at 40 CFR 51.160 through 51.1666 and appendix S to part 51. Federal permitting regulations are promulgated at 40 CFR 52.21 for PSD areas that are not covered by a SIP program.

In order to receive a construction permit for a major new source or major modification, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory NSR requirements. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

Permitting agencies, either State, local or Federal, review the permit application to affirm the proposed source or modification will comply with the Act and applicable regulations. The permitting Agency then provides for public review of the proposed project and issues the permit based on its consideration of all technical factors and public input. The EPA, more broadly, reviews a fraction of the total applications and audits the State and local programs for their effectiveness. Consequently, information prepared and submitted by the source is essential for the source to receive a permit, and for Federal, State and local environmental agencies to adequately review the permit application and thereby properly administer and manage the NSR programs.

To facilitate adequate public participation, information is submitted by sources as a part of their permit application and should generally be a matter of public record. See sections 165(a)(2) and 110(a)(2)(C), (D), and (F) of the Act. Notwithstanding, to the extent that the information required for the completeness of a permit is proprietary, confidential, or of a nature that it could impair the ability of the source to compete in the marketplace, that information is collected and handled according to EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2). See also section 114(c) of the Act.

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 annual public reporting and recordkeeping burden for this collection of information is broken down as follows:

Type of permit action	Major PSD	Major Part D	Minor
Number of sources	300	100	56,500
Burden Hours per Response:			
Industry	839	577	40
Permitting Agencies	272	109	30

Respondents/Affected Entities: Industrial plants, State and local permitting agencies.

Estimated Number of Respondents: (113,400).

Frequency of Response: (1 per respondent).

Estimated Total Annual Hour Burden: (4,155,950) hours.

Estimated Annualized Cost Burden: $(0).

The estimated total annual burden is adjusted downward by 559,310 hours and the actual change in burden is 0 but there is an adjustment of $28.870 million due to the downward adjustment of numbers of major source permits since the 1997 ICR approval. The adjustment is based on a more accurate assessment of the distribution of major PSD permits, major Part D permits and minor State NSR permits. The total number of respondents decreases by 1,420. The burden per type of permit remains unchanged. The 1997 ICR documentation with recalculated spreadsheets and explanation for the adjustment in burden can be found at website "http://www.epa.gov/ttn/nsr" under "What's New on NSR" or can be obtained by calling Pamela J. Smith at 919–541–0641 or E-mailing her at "smith.pam@epa.gov" for review and comment.

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: August 16, 2000.

William T. Harnett,

Acting Director, Information Transfer and Program Integration Division.

[FR Doc. 00–22654 Filed 9–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00677; FRL–6743–2]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a 4-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to the following topics: 1) Test guidelines for chronic inhalation toxicity and carcinogenicity of fibrous particles; 2) Cumulative hazard assessment of organophosphorous pesticides; 3) Components and methodologies of the Calendex™, Lifetime™, and REX models, as tools for dietary and residential pesticide exposure and risk assessments; 4) Assessment of pesticide concentrations in drinking water and water treatment effects on pesticide removal and transformation. The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Larry Dorsey at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on September 26, 27, 28, and 29 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486–1111.

Requests to participate 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, your request must identify docket control number OPP–00677 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Larry Dorsey or Olga Odiott, Designated Federal Officials, Office of Science Coordination and Policy, (7101C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: dorsey.larry or odiott.olga@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Food Quality Protection Act (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the 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.* A meeting agenda is currently available; copies of EPA primary background documents for this meeting will be available by mid September. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap. To access this document on the Home Page select **Federal Register** notice announcing this meeting. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00677. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the 1) Test guidelines for chronic inhalation toxicity and carcinogenicity of fibrous particles; 2) Cumulative hazard assessment of organophosphorous pesticides; 3) Components and methodologies of the Calendex™, Lifeline™ and REX models, as tools for dietary and residential pesticide exposure and risk assessments; 4) Assessment of pesticide concentrations in drinking water and water treatment effects on pesticide removal and transformation, including any information claimed as Confidential Business Information (CBI). This administrative 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 administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00677 in the subject line on the first page of your request. Interested persons are permitted to file written statements before the meting. To the extent that time permits, and upon advance written request to the persons listed under **FOR FURTHER INFORMATION CONTACT,** interested persons may be permitted by the Chair of the FIFRA Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc.). There is no limit on the extent of written comments for consideration by the Panel, but oral statements before the panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements at the meeting should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies of their presentation and/or remarks to the Panel. The

Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: "opp-docket@epa.gov." Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00677. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

This 4-day meeting concerns several scientific issues undergoing consideration within the EPA, Office of Prevention, Pesticide and Toxic Substances (OPPTS), as follows:

1. *Test guidelines for chronic inhalation toxicity and carcinogenicity of fibrous particles:* The Agency's current health effects test guidelines for chronic inhalation toxicity and/or carcinogenicity studies of chemicals are considered not specific enough for the testing of fibrous substances. Through an interagency working group, a workshop was conducted to obtain input from the scientific community on a number of issues related to fiber testing. Based on the recommendations from the workshop panel and participants, EPA/OPPT has developed a proposed standardized study protocol for respirable fibers which was announced in the **Federal Register** of July 28, 1999 (64 FR 40871) (FRL–6078–6), for public comments. All public comments have been evaluated and a revised draft guideline with some of the public comments incorporated has been prepared. This scientific advisory panel is charged to review the EPA draft test guidelines, advise on remaining issues on the study protocol for the health effects testing of fibrous particles, and provide EPA with an opinion about the scientific validity of the testing guidance.

2. *Cumulative hazard assessment of organophosphorous pesticides:* The Agency is presenting an approach to assess and select common mechanism endpoints for accumulating hazard and a method for determining relative potencies for organophosphate pesticides. The relative potencies will be used in a cumulative risk assessment of multiple organophosphate pesticides. The FIFRA SAP is being asked to advise on advantages and disadvantages of the method used to assess cumulative hazard and rank the pesticides.

3. *Components and methodologies of the Calendex™, Lifeline™ and REX models, as tools for dietary and residential pesticide exposure and risk assessments:* The purpose of this session is to describe the algorithms, input data requirements, and output reports associated with the Residential Exposure (REX) model, and the Calendex software. REX is a spreadsheet (EXCEL) based model which allows aggregation of multiple routes (dermal, inhalation, oral) and pathways (product use scenarios) to estimate exposure and risk from pesticides used in a residential setting.

A major requirement of the FQPA is that exposures to pesticides across various pathways and routes (e.g., dermal exposure through turf uses) be appropriately combined such that an "aggregate" exposure assessment can be performed. The Agency currently uses Calendex software from Novigen Sciences to perform this aggregation. The purpose of this session is to describe the components and methodologies used by the Calendex software the basic concepts and assumptions behind Calendex and its algorithms and procedures.

Aggregate and cumulative exposure assessments to pesticides must capture the correlation in residues that occur from both additive and exclusionary processes resulting from use of pesticides. The analysis also requires a quantitative mechanism for evaluating risks associated with exposures to time-varying mixtures of pesticides. The purpose of this presentation is to describe an analysis of aggregate exposures and risks associated with exposures to a hypothetical pesticide, Alpha, and the cumulative exposure to and risk from three hypothetical pesticides, Alpha, Beta, and Gamma. The cumulative risks are evaluated by determining the systemic (absorbed) doses that result from inhalation, dermal, and oral exposures to the pesticides. A "toxicity equivalent" model of cumulative risk is used to quantitatively evaluate cumulative risks. Assessments were performed using LifeLine™ Version 1.0. This model simulates pesticide exposure using an individual-based approach where daily exposures are evaluated for each person, season, and location.

4. *Assessment of pesticide concentrations in drinking water and water treatment effects on pesticide removal and transformation:* The purpose of this session is to present to the Panel a progress report of ongoing activities associated with the estimation of pesticide concentrations in drinking water for FQPA aggregate exposure assessments and the assessment of water treatment effects on pesticide removal and transformation. Progress reports will be provided on regression modeling efforts, status of the national drinking water monitoring program, and preliminary literature survey and evaluation of different water treatment processes employed in drinking water production facilities.

B. Panel Report

Copies of the Panel's report of their recommendations will be available approximately 45 working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I.C. of this document.

List of Subjects

Environmental protection.

Dated: August 29, 2000.

Steven K. Galson,

Director, Office of Science Coordination and Policy.

[FR Doc. 00–22774 Filed 9–1–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL –6864–4]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times

noted are Eastern Daylight Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. Ecological Processes and Effects Committee (EPEC)—September 20–22, 2000

The Ecological Processes and Effects Committee (EPEC) will meet on September 20–22, 2000 in Room 6013 (the SAB Conference Room) of the Ariel Rios Building, 1200 Pennsylvania Ave, Washington, DC. The meeting will be open to the public, with seating on a first-come, first-served basis. The meeting will convene at 9:00 a.m. on September 20 and at 8:30 a.m. on September 21 and 22, and will end no later than 5:30 p.m. on each day.

The purpose of the meeting is for the Committee to continue work on a self-initiated project to offer advice to the Agency on the design and application of a science-based scheme for reporting on ecological condition. The Committee will discuss a proposed conceptual framework for reporting on ecological condition, and will apply the framework to several Agency examples or programs. Candidate programs that may be used as case examples include: the Environmental Monitoring and Assessment Program's (EMAP) Western Pilot, clean water objectives identified in EPA's 1997 Strategic Plan, the National Environmental Performance Partnership System (NEPPS) core measures, and the Forest Health Monitoring Program. As background to the project, the Committee was briefed in July 1998 by various Agency offices on efforts to develop performance measures and environmental indicators, as well as the Heinz Center project to develop a national environmental report card. The Committee met in April 2000 to discuss the components of a framework for reporting on ecological condition. Following the September 2000 meeting, the Committee expects to complete a report to the Agency describing a proposed reporting framework, with illustrative case examples relevant to EPA programs.

For Further Information—The proposed meeting agenda is available from Ms. Mary Winston, Committee Operations Staff, Science Advisory Board (1400A), U.S. EPA, 1200 Pennsylvania Ave., NW, Washington DC 20460, telephone (202) 564–4538, fax (202) 501–0582, or via e-mail at *winston.mary@epa.gov*.

Any member of the public wishing to submit oral comments must contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO) for the Committee, *in writing* no later than 4:00 pm on September 15, 2000 at: EPA Science Advisory Board (1400A), Ariel Rios Building, Room 6450DD, 1200 Pennsylvania Ave, NW, Washington DC 20460; FAX (202) 501–0582; or e-mail at *sanzone.stephanie@epa.gov*. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to the DFO no later than the time of the presentation; these will be distributed to the Committee and the interested public.

2. Executive Committee (EC)—September 22, 2000

The Executive Committee (EC) of US EPA's Science Advisory Board will conduct a public teleconference meeting on Friday, September 22, 2000 between the hours of 11:00 am and 1:30 pm Eastern Daylight Time. The meeting will be coordinated through a conference call connection in Room 5530 in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Betty Fortune no earlier than one week prior to the meeting (beginning on September 15) at (202) 564–4533, or via e-mail at *betty.fortune@epa.gov*.

Purpose of the Meeting: In this meeting, the Executive Committee plans to review reports from some of its Committees/Subcommittee, most likely including the following:

(a) *Drinking Water Committee* (DWC): (a) Review of Certain Elements of the Proposed Arsenic Drinking Water Regulation; (b) Advisory on the Candidate Contaminant List Research Plan (for more details on the SAB review of these two issues, please refer to 65 **Federal Register** 30589, May 12, 2000 and 65 **Federal Register** 44051 July 17, 2000, respectively).

(b) *Radiation Advisory Committee* (RAC): (a) Advisory on Approach for Mining Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) (for more details on the SAB review of this issue, please refer to 65 **Federal Register** 18095, April 6, 2000).

(c) *Integrated Human Exposure Committee* (IHEC): (a) Review of the National Human Exposure Assessment Survey (NHEXAS) (for more details on the SAB review of this issue, please refer to 65 **Federal Register** 35632, June 5, 2000).

Please check with our staff prior to the meeting to determine which reports will be on the agenda as last minutes changes can take place.

Availability of Review Materials: Drafts of the reports that will be reviewed at the meeting will be available to the public at the SAB website (http://www.epa.gov/sab) by close-of-business on September 13, 2000.

For Further Information: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments must contact Dr. Donald Barnes, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov*. Requests for oral comments must be in writing (e-mail preferred) and received by Dr. Barnes no later than noon Eastern Time on September 15, 2000.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the

comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information: Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access: Individuals requiring special accommodation at these meetings, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 28, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–22655 Filed 9–1–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 29, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. The Avoca Company, Scottsdale, Arizona; to acquire 100 percent of the voting shares of First State Bank of Nebraska, Nebraska City, Nebraska.

Board of Governors of the Federal Reserve System, August 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–22575 Filed 9–1–00; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00–21591) published on pages 51618 and 51619 of the issue for Thursday, August 24, 2000.

Under the Federal Reserve Bank of San Francisco heading, the entry for BOU Bancorp, Inc., Ogden, Utah, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. BOU Bancorp, Inc., Ogden, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Utah, Ogden, Utah.

Comments on this application must be received by September 15, 2000.

Board of Governors of the Federal Reserve System, August 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–22576 Filed 9–1–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegation of Authority; Assistant Secretary for Management and Budget

Part A, of the Office of the Secretary, Statement of Organization, Functions and Delegation of Authority for the Department of Health and Human Services, is being amended at Chapter AM, HHS Management and Budget Office, Chapter AMM, Office of Information Resources Management (OIRM), as last amended at 63 FR 31779–81, June 10, 1998. The changes are to reflect a realignment of functions within the existing components and the establishment of an Office of Information Technology Security and Privacy within the Office of Information Resources Management. The changes are as follows:

Delete in its entirety Chapter AMM, Office of Information Resources Management and replace with the following:

Chapter AMM, Office of Information Resources Management AMM.00 Mission. The Office of Information Resources Management advises the Secretary and the Assistant Secretary for Management and Budget/Chief Information Officer (CIO) on matters pertaining to the use of information and related technologies to accomplish Departmental goals and program objectives. The mission of the Office is to provide assistance and guidance on the use of technology-supported business process reengineering, investment analysis, performance measurement, and strategic development and application of information systems and infrastructure, policies to provide improved management of information resources and technology, and better, more efficient service to our clients and employees.

The Office is responsible for the overall quality of information resources management throughout the Department; representing the Department to central management agencies (*e.g.,* the Office of Management and Budget); developing and monitoring Departmentwide Enterprise Infrastructure Management strategy; developing and maintaining the Department's information technology architecture; developing and establishing Departmental information technology policies, and advocating rigorous methods for analyzing,

selecting, developing, operating, and maintaining information systems.

The Office collaborates with the Operating Divisions (OPDIVs) and Staff Divisions (StaffDivs) of the Department to resolve policy and management issues, manage risk associated with major information systems, evaluate and approve investments in technology, monitor Departmental policy and architectural compliance, and share best practices.

The Office exercises authorities delegated by the Secretary to the Assistant Secretary for Management and Budget, as the CIO for the Department. These authorities derive from the Information Technology Management Reform Act of 1996, the Paperwork Reduction Act of 1995, the Computer Matching and Privacy Act of 1988, the Computer Security Act of 1987, the National Archives and Records Administration Act of 1984, the competition in Contracting Act of 1984, the Federal Records Act of 1950, OMB Circular A–130, Government Printing and Binding Regulations issued by the Joint Committee on Printing, and Presidential Decision Directive 63.

Section AMM.10 Organization. The Office of Information Resources Management (OIRM), under the supervision of the Deputy Assistant Secretary for Information Resources Management/Deputy CIO, who reports to the Assistant Secretary for Management and Budget/CIO, consists of the following:

- Immediate Office (AMMA)
- Office of Information Technology Policy (AMMJ)
- Office of Information Technology Services (AMML)
- Office of Information Technology Development (AMMM)
- Office of Information Technology Security and Privacy (AMMN)

Section AMM.20 Functions. A. The Immediate Office of Information Resources Management is responsible for the following:

1. Providing advice and counsel to the Secretary and the Assistant Secretary for Management and Budget/Chief Information Officer under the direction of the Deputy Assistant Secretary for Information Resources Management serving as the Department's Deputy CIO.

2. Providing executive direction to align Departmental strategic planning for information resources and technology with the Department's strategic business planning.

3. Providing executive direction to develop and maintain Departmental information technology policy and architecture.

4. Promoting business process reengineering, investment analysis, and performance measurement throughout the Department, to capitalize on evolving information technology, treating it as an investment rather than as an expense.

5. Representing the Department in Federal Governmentwide initiatives to develop policy and implement an information infrastructure.

6. Chairing the Department's Information Technology Investment Review Board (ITIRB) and the Department's Chief Information Officers' Advisory Council (y the Deputy Assistant Secretary for Information Resources Management/ Deputy CIO). Chairing the Office of the Secretary Information Resources Management Policy and Planning Board (by the Deputy Office Director).

7. Managing funds, personnel, information, property, and projects of the Office of Information Resources management.

8. Acting as the CIO for the Office of the Secretary.

B. The Office of Information Technology Policy (OITP) is responsible for the following:

1. Working with OPDIV Chief Information Officers (CIOs) to support Governmentwide initiatives of the Federal CIO Council and to jointly identify opportunities for participation and consultation in planning information technology projects with major effects on OPDIV program performance (*e.g.*, capital planning and investment, security, information technology architecture). OITP provides leadership primarily in the planning, design, and evaluation of major projects.

2. Assessing risks that major information systems pose to successful performance of program operations and efficient conduct of administrative business throughout the Department, developing risk assessment policies and standard operating procedures and tools, and using program outcome measures to gauge the quality of Departmental information resources management.

3. Coordinating the Department's strategic planning and budgeting processes for information technology, providing direct planning development and support to assure that IRM plans support agency business planning and mission accomplishment.

4. Coordinating the activities of the Departmental Information Technology Investment Review Board (ITIRB) in assessing the Department's major information systems to analyze and evaluate IT investment decisions based on risk-adjusted rate of return and support of agency mission. Review OPDIV ITIRB implementations, IT capital funding decisions, and use of performance metrics to evaluate program success or failure for both initial and continued funding.

5. Developing policies and guidance on information resources and technology management as required by law or regulation, or in consultation with program managers on issues of Departmental scope.

6. Coordinating and supporting the Department's Chief Information Officer's Advisory Council, whose membership consists of the Chief Information Officers from each OPDIV.

7. Establishing guidance and training requirements for managers of information systems designated as sensitive under the Department's automated information systems security program.

8. Providing leadership for special priority initiatives of Department-wide scope (*e.g.*, infrastructure management, security).

9. Representing the Department through participation on interagency and Departmental work groups and task forces.

10. Working with OPDIV Chief Information Officers to jointly identify opportunities for participation and consultation in administering information management functions and telecommunications initiatives with major effects on OPDIV performance. OITP provides leadership primarily in defining alternatives for acquisition of telecommunications services and coordinating implementation of information management initiatives.

11. Managing the Department's telecommunications program, including the development of Departmental telecommunications policies and support of Government-wide telecommunications management projects and processes (*e.g.*, the Interagency Management Council (IMC) and FTS2000 and successor contracts).

13. Managing the Department's information collection program, including development of Departmental policies, coordinating the development of the Department's information collection budget, reviewing and certifying requests to collect, information from the public.

13. Approving and reporting on computer matching activities as required by law through the Departmental Data Integrity Board.

14. Managing the Departmental printing management, records management, and mail management policy programs.

15. Providing support for special priority initiatives (*e.g.*, the Government Information Locator System, Internet Electronic Government (E-GOV) managment).

C. The Office of Information Technology Services (OITS) is responsible for the following:

1. Operating, maintaining, and enhancing the Office of the Secretary's computer network consisting of interconnected local area networks with wide area network access to Departmental data centers, external organizations, Internet resources and commercial information services for the Office of the Secretary and organizations participating through interagency agreements.

2. Establishing and monitoring network policies and procedures, and developing plans and budgets for network support services.

3. Identifying, implementing, and maintaining standard office automation applications running on the Office of the Secretary network, such as electronic mail, scheduling, Internet/Intranet, and bulletin board services.

4. Working with other HHS Operating and Staff Divisions to implement electronic links between the Office of the Secretary computer network and other networks in conjunction with changing user needs and technological advancements.

5. Ensuring reliable, high-performance network services, including implementation of automated tools and procedures for network management, utilizing network performance measure to enhancing network security, providing priority response services for network-related problems, and providing remote access to the network for field use and for telecommuting.

6. Implementing and operating electronic tools to enhance Secretarial communications with all HHS personnel.

7. Coordinating with the Program Support Center or other external providers, the delivery of voice, voice messaging, and video conferencing services for the Office of the Secretary, including system design and implementation, and cost sharing.

8. Coordinating the OS strategic planning and budgeting processes for information technology, providing direct planning support to assure that IRM plans support agency business planning and mission accomplishment.

9. Developing policies and guidance on information resources management within the Office of the Secretary for acquisition and use of information technology, development of architectural standards for interoperability, and coordination of implementation procedures.

10. Maintaining and operating the inventory of automated data processing equipment for the Office of the Secretary.

11. Operating and maintaining an information technology support service (Help Desk) for the Office of the Assistant Secretary for Management and Budget, the Immediate Office of the Secretary, and subscribing Staff Divisions, for managing standard hardware and software configurations, user applications, and network support.

12. Managing contracts for IRM-related equipment and support services.

13. Coordinating and supporting the Office of the Secretary Information Resources Management Policy and Planning Board, an advisory body whose membership consists of the Staff Division Chief Information Officers.

14. Representing the Department through participation on interagency and Departmental work groups and task forces.

D. The Officer of Information Technology Development (OITD) is responsible for the following:

1. Leading Departmental efforts to expand availability of electronic means for conducting business among all components of the Department, all agencies of the Federal government, and all parties involved in accomplishing Departmental program objectives (including State Governments, contractors, grantees, other service providers, and the general public). This include provision of existing documents in electronic format on the Internet in support of electronic dissemination to the public.

2. Supporting implementation of general purpose, standards-based, distributed computing environments consisting of data communications networks, database management systems, and information processing platforms, to promote market competition and reengineering of application systems for cost-effectiveness, scalability, and flexibility.

3. Providing access for all employees within the office of the Secretary to services and related tools, for systems engineering, applications development, and systems maintenance, to exploit the distributed computing environment and to share resources and best practices.

4. Identifying key emerging, enabling technologies, especially Internet and database innovations, and coordinate, manage or direct pilot project in these areas to establish proof of concept, confirm return on investment, or implement initial production implementations in support of agency information technology business requirements.

5. Supporting effective use of available means to achieve electronic messaging, database access, file transfer, and transaction processing through Internet and commercial information services.

6. Supporting implementation of a general purpose, standards-base IT architecture, promoting and coordination implementation of data standards for information integration across application systems, utilizing distributed computing environments consisting of data communications networks, database management system, and information processing platforms.

7. Assisting managers of applications systems to increase the value and quality of their services and to control risks associated with systems integration, technological obsolescence, software development, and migration to standards-based technologies, especially for systems automating common administrative and management services.

8. Maintaining a collection of technical reference documents, including policies, standards, trade press, market research, and advisory service publications.

9. Representing the Department through participation on interagency and Departmental work groups and task forces.

10. Managing and supporting the HHS Internet Information Management Council, as the focal point for Internet information management and dissemination issues and Department policy to build HHS' expanding Internet presence.

E. The Office of Information Technology Security and Privacy is responsible for the following:

1. Implementing and administering the program to protect the information resources of the Department in compliance with legislation, Executive Orders, directives of the Office of Management and Budget (OMB), or other mandated requirements (*e.g.*, Presidential Decision Directive 63, OMB Circular A–130), the National Security Agency, and other Federal agencies.

2. Developing cyber security policies and guidance (*e.g.*, hardware, software, telecommunications) for the Department. Policy should also include employees and contractors who are responsible for systems or data, or for the acquisition, management, or use of information resources. In addition, maintaining the DHHS Automated Information Systems Security Program handbook as needed.

3. Monitoring OPDIV and StaffDiv information system security program activities by reviewing Operating Division and Staff Division security plans for sensitive systems, and evaluating safeguards to protect major information systems, or IT infrastructure.

4. Responsible for responding to requests in conjunction with OMB Circular A–130, the Computer Security Act of 1987, and Presidential Decision Directive 63, or other legislative or mandated requirements related to IT security or privacy.

5. Monitoring all Departmental systems development and operations for security and privacy compliance.

6. Recommending to the CIO to grant or deny programs the authority to operate information systems.

7. Establishing and leading inter-OPDIV teams to conduct reviews of OPDIV programs to protect HHS' cyber and personnel security programs. These teams will conduct vulnerability assessments of HHS' critical assets.

8. Coordinating activities with internal and external organizations reviewing the Department's information resources for fraud, waste, and abuse, and to avoid duplication of effort across these programs.

9. Developing, implementing, and evaluating an employee cyber security awareness and training program to meet the requirements as mandated by OMB Circular A–130, and the Computer Security Act.

10. Establishing and providing leadership to the subcommittee of the HHS CIO Council on Security.

11. Establishing and leading the HHS Computer Security Incident Response Capability team, the Department's overall cyber security incident response/coordination center and primary point of contact for Federal Computer Incident Response Capability (FedCIRC) and National Infrastructure Protection Center (NIPC).

Dated: August 15, 2000.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 00–22569 Filed 9–1–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–48]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Office at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of Effectiveness of NIOSH Publications—NEW— National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). Through the development, organization, and dissemination of information, NIOSH promotes awareness about occupational hazards and their control, and improves the quality of American working life. Although NIOSH uses a variety of media and delivery mechanisms to communicate with its constituents, one of the primary vehicles is through the distribution of NIOSH-numbered publications. The extent to which these publications successfully meet the information needs of their intended audience is not currently known. In a period of diminishing resources and increasing accountability, it is important that NIOSH be able to demonstrate that communications about its research and service programs are both effective and efficient in influencing workplace change. This requires a social marketing evaluation of NIOSH products to measure the degree of customer satisfaction and their adoption of recommended actions.

The present project proposes to do this by conducting a mail survey of a primary segment of NIOSH's customer base, the community of occupational safety and health professionals. In collaboration with the American Association of Occupational Health Nurses (13,000 members), the American Industrial Hygiene Association (12,400 members), the American College of Occupational and Environmental Medicine (6,500 members), and the American Society of Safety Engineers (33,000 members), NIOSH will survey a sample of their memberships to ascertain, among other things: (1) Their perceptions and attitudes toward NIOSH as a general information resource; (2) their perceptions and attitudes about specific types of NIOSH publications (*e.g.*, criteria documents, technical reports, alerts); (3) the frequency and nature of referral to NIOSH in affecting occupational safety and health practices and policies; (4) the extent to which they have implemented NIOSH recommendations; and (5) their recommendations for improving NIOSH products and delivery systems. The results of this survey will provide an empirical assessment of the impact of NIOSH publications on occupational safety and health practice and policy in the United States as well as provide direction for shaping future NIOSH communication efforts. There is no cost to the respondents.

Respondents	Number of responses/ respondents	Average burden per response	Total burden (hours)
3,000	1	40/60	2,000

Dated: August 29, 2000.

Nancy Cheal,

Acting Associate Director for Policy Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–22603 Filed 9–1–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–49]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Office at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Thyroid Disease in Persons Exposed to Radioactive Fallout from Atomic Weapons Testing at the Nevada Test Site: Phase III—NEW—National Center for Environmental Health (NCEH), Centers for Disease Control (CDC). In 1997, the National Cancer Institute (NCI) released a report entitled, *Estimated Exposures and Thyroid Doses Received by the American People from I–131 In Fallout Following Nevada Nuclear Bomb Test.* This report provided county-level estimates of the potential radiation doses to the thyroid gland of American citizens resulting from atmospheric nuclear weapons testing at the Nevada Test Site (NTS) in the 1950's and 1960's. The Institute of Medicine (IOM) conducted a formal peer review of the report at the request of the Department of Health and Human Services. In the review, IOM noted that the public might desire an assessment of the potential health impact of nuclear weapons testing on American populations. The IOM also suggested that further studies of the Utah residents who have participated in previous studies of radiation exposure and thyroid disease might provide this information.

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC) proposes to conduct a study of the relation between exposure to radioactive fallout from atomic weapons testing and the occurrence of thyroid disease on an extension of a cohort study previously conducted by the University of Utah, Salt Lake City, Utah. This study is designed as a follow-up to a retrospective cohort study begun in 1965. This is the third examination (hence Phase III) of a cohort of individuals who were children living in Washington County, Utah, and Lincoln County, Nevada, in 1965 (Phase I) and who were presumably exposed to fallout from above-ground nuclear weapons testing at the Nevada Test Site in the 1950s. The cohort also includes a control group who were children living in Graham County, Arizona, in 1966 and presumably unexposed to fallout.

The study headquarters will be at the University of Utah in Salt Lake City, Utah. The field teams will spend the majority of their time in the urban areas nearest the original counties if the same pattern of migration holds that was found in Phase II. These urban areas include St. George, Utah, the Wasatch Front in Utah, Las Vegas, Nevada, Phoenix/Tucson, Arizona, and Denver, Colorado. In addition some time will be spent in California as a number of subjects had relocated there at the time of Phase II. The purposes of Phase III are three fold: First to re-examine the participants in Phase II for occurrence of thyroid neoplasia and other diseases since 1986. Residents of the three counties who moved before they could be included in the original cohort will be located and examined. Second, disease incidence will be analyzed in addition to period prevalence as used in the Phase II analysis. Use of incidence will allow for greater power to detect increased risk of disease in the exposed population through the use of person-time. Third, disease specific mortality rates for Washington County, Utah, and a control county, Cache County, Utah, will be compared for people who lived in these two counties during the time of above-ground testing. This comparison will determine if the risk of mortality in Washington County (the exposed group) is significantly greater than Cache County (the control group). CDC/NCEH is requesting a 3-year clearance. There is no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden response (hrs)	Total burden (in hours)
Exposure Questionnaire	2400	1	1	2400
Questionnaire Preparation Booklet	2400	1	30/60	1200
Group Member Information	4800	1	5/60	384
Consent Forms	4800	1	10/60	816
Interview Booklet	4800	1	30/60	2400
Medical History Questionnaire (male)	2400	1	1	2400
Medical History Questionnaire (female)	2400	1	1	2400
Refusal Form	48	1	5/60	4
Total hours in burden				12004

Dated: August 29, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–22604 Filed 9–1–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Study Team for the Los Alamos Historical Document Retrieval and Assessment Project

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting:

Name: Public Meeting of the Study Team for the Los Alamos Historical Document Retrieval and Assessment Project.

Time and Date: 5 p.m.–7 p.m., September 13, 2000.

Place: Holiday Inn Express Hotel, 2455 Trinity Drive, Los Alamos, New Mexico, telephone 505/661–1110.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with Department of Energy (DOE) and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) is given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between the ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This Study Team is charged with locating, evaluating, cataloguing, and copying documents that contain information about historical chemical or radionuclide releases from facilities at the Los Alamos National Laboratory since its inception. The purposes of this meeting are to review the goals, methods, and schedule of the project, discuss progress to date, provide a forum for community interaction, and serve as a vehicle for members of the public to express concerns and provide advice to CDC.

Matters to be Discussed: Agenda items include a presentation from the National Center for Environmental Health (NCEH) and its contractor regarding an update on the information gathering project that began in February of 1999, including discussion of the project's initial draft report scheduled to be issued in late August. There will be time for public input, questions, and comments.

All agenda items are subject to change as priorities dictate.

Contact Persons for Additional Information: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, Building 6, Room T–027, Executive Park Drive (E–39), Atlanta, GA 30329, telephone 404/639–2522, fax 404/639–2575.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: August 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–22602 Filed 9–1–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory Health effects Subcommittee.

Times and Dates: 8:30 a.m.-5 p.m., Ocober 18–19, 2000.

Place: West Coast Idaho Falls Hotel, 475 River Parkway, Idaho Falls, Idaho 83402, telephone, 208/523–8000.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. OHS delegated program responsibility to CRC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under section 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions form the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC and the Administrator, ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH) and ATSDR on updates regarding progress of current studies. Agenda items are subject to change as priorities dictate.

Contact Persons for more Information: Arthur J. Robinson, Jr., Radiation Studies ranch, Division of Environmental Hazards and Health Effects, NCEH, CDC, Building 6, Room T004, Executive Park Drive (E-39), Atlanta, Georgia 30329, telephone 404/639–2509, fax 404/639–2575.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: August 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services, Office, Centers for Disease Control and Prevention.

[FR Doc. 00–22605 Filed 9–1–00; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1491, HCFA–382, and HCFA–R–207]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Request for Medicare Payment —Ambulance and Supporting Regulations in 42 CFR Section 410.40 and 424.124;

Form No.: HCFA–1491 (OMB# 0938–0042);

Use: This form is used by physicians, suppliers, and beneficiaries to request payment of Part B Medicare services. It is used to apply for reimbursement for ambulance services.

Frequency: On occasion;

Affected Public: Business or other for-profit, Individuals or households, and Not-for-profit Institutions;

Number of Respondents: 9,301,183;

Total Annual Responses: 9,301,183;

Total Annual Hours: 390,418.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: ESRD Beneficiary Selection and Supporting Regulations Contained in 42 CFR 414.330;

Form No.: HCFA–382 (OMB# 0938–0372);

Use: ESRD facilities have each new home dialysis patient select one of two methods to handle Medicare reimbursement. The intermediaries pay for the beneficiaries selecting Method I and the carriers pay for the beneficiaries selecting Method II. This system was developed to avoid duplicate billing by both intermediaries and carriers.

Frequency: Other (One time only);

Affected Public: Individuals or Households, Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 8,600;

Total Annual Responses: 8,600;

Total Annual Hours: 717.

(3) *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Evaluation of the State Medicaid Reform Demonstrations and Evaluation of the Medicaid Health Reform Demonstrations;

Form No.: HCFA–R–207 (OMB# 0938–0708);

Use: These evaluations investigate health care reform in ten states that have implemented demonstration programs using Section 1115 waivers. The surveys gather information to answer questions regarding access to health care, quality of care delivered, satisfaction with health services, and the use and cost of health services. During the extended period of authorization, the surveys will be administered to Medicaid eligibles, both demonstration participants and comparison group non-participants.

Frequency: Other: One-time;

Affected Public: Individuals or Households;

Number of Respondents: 5,050;

Total Annual Responses: 5,050;

Total Annual Hours: 2,746.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–22574 Filed 9–1–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is available on the internet at the following website: *http://www.health.org/workpl.htm*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl,

Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

Special Note

Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories ,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Gamma-Dynacare Medical Laboratories ,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232, (Formerly: Cedars Medical Center, Department of Pathology)

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361 (Formerly: NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA

91367, 818–598–3110/800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800 (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 858–279–2600/800–882–7272
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248–373–9120/800–444–0106, (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947, (Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006, (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728, (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590, (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995/858–677–7970
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–339–4299 (Formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–22606 Filed 9–1–00; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–58]

Notice of Submission of Proposed Information Collection to OMB; Rural Housing and Economic Development Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* October 5, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (20506–0169) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Rural Housing and Economic Development Programs.

OMB Approval Number: 2506–0169.

Form Numbers: SF–424.

Description of the Need for the Information and its Proposed Use: This information collection is required to rate and rank competitive applications and to ensure eligibility of applicants for funding.

Respondents: Non-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: Semi-Annually.

Reporting Burden:	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
	700		1.77		15.27		18,940

Total Estimated Burden Hours: 18,940.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 29, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–22601 Filed 9–1–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4558–N–03]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: D. Jackson Kinkaid, Secretary to the Mortgagee Review Board, 451 7th Street, SW, Washington, DC 20410, telephone: (202) 708–3041 extension 3574 (this is not a toll-free number). A Telecommunications Device for Hearing and Speech-Impaired Individuals (TTY) is available at 1 (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989), requires that HUD "publish a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from January 1, 1998 through May 31, 2000.

1. AccuBanc Mortgage/Medallion Mortgage Company, Dallas, TX

Action: Proposed settlement agreement that would include the indemnification on loans in which violations of the HUD/FHA requirements and regulations occurred.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations. AccuBanc also reported to the Department a number of similar loans containing violations of HUD/FHA requirements.

2. Adana Mortgage Bankers, Inc., Atlanta, GA

Action: Proposed settlement agreement that would include the indemnification on up to six loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $1,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

3. Alliance Mortgage Banking, Massapequa, NY

Action: Proposed settlement agreement that would include the indemnification on up to twenty-six loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $25,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

4. Allstate Mortgage Company, Norwalk, CA

Action: Immediately and permanently withdrew the HUD/FHA approval.

Cause: Serious violations of HUD/FHA requirements and regulations that included the indictment and conviction of the president and other officers for mail fraud and money laundering.

5. Alpha America Financial, Inc., Costa Mesa, CA

Action: Proposed settlement agreement that would include the payment to the Department of a civil money penalty of $5,000.

Cause: An advertisement in a mortgage industry publication that invited other mortgagees to become affiliated with Alpha as net branches.

6. Ambassador Mortgage Corporation, Turnersville, NJ

Action: Proposed settlement agreement that would include the payment to the Department of a civil money penalty of $25,000; payment to the Department the amount of the over-insurance in two loans; and refund to mortgagors all unallowable fees.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

7. Ameribanc Mortgage Corp., Mesa, AZ

Action: Proposed settlement agreement that would include the indemnification on fifteen loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $55,500.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

8. Amerifirst Mortgage Corporation, Hempstead, NY

Action: Proposed withdrawal of the HUD/FHA approval for a period of three years; and proposed payment to the Department of a civil money penalty of $100,000.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: submitting to HUD/FHA false/inaccurate HUD–1 Settlement Statements; failing to ensure that non-profit mortgagors met their required investment; failing to ensure that a mortgagor met the minimum required investment; submitting a delinquent loan for endorsement; using false income to qualify a mortgagor; originating 203k mortgages on ineligible properties; originating a loan using an incorrect Social Security Number; approving a mortgagor with a delinquent student loan; approving a refinance transaction for a mortgagor with delinquent credit; failing to accurately calculate the mortgagor's effective income; failing to verify a mortgagor's source of funds for closing; and using a false gift letter to document a mortgagor's source of funds.

9. Apollo Mortgage and Financial Services, Inc., St. Petersburg, FL

Action: Debarred Apollo Mortgage and Financial Services, Inc. for one year; the proposed payment to the Department of a civil money penalty of $40,000; and the recommending of debarment of principals for one year.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

10. ARC Financial Group, Inc., Marlton, NJ

Action: Proposed settlement agreement that would include the indemnification of up to seven loans in which violations of the HUD/FHA requirements and regulations occurred; refund all unallowable fees charged to borrowers on five loans originated during the last two years; perform monthly Quality Assurance reviews; and the payment to the Department of a civil money penalty of $30,500.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

11. Associates Mortgage Group, Inc., Louisville, KY

Action: Proposed settlement agreement that would include the indemnification of a loan in which violations of the HUD/FHA requirements and regulations occurred.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

12. Assurety Mortgage Group, Inc., Decatur, GA

Action: Withdrew the HUD/FHA approval for a period of three years; and the payment to the Department of a civil money penalty of $45,500.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: failed to report a violation of law or regulation, false statement or program abuse to the HUD field office or the Inspector General; used altered documents for loan approval; failed to document source of funds and misrepresented Title II program requirements to borrowers; allowed the borrower to hand carry the VOE and VOD; failed to document income used for loan approval; failed to document contributory value of labor; allowed debts to be omitted from the calculation of the debt to income ratios; approved loans that exceeded acceptable ratios without compensating factors; charged borrowers unallowable fees; failure to maintain complete origination files; failed to obtain acceptable documentation to verify income; failed to obtain the borrower's signature; failed to verify a Social Security Number (SSN); failed to maintain and implement a Quality Control Plan in compliance with HUD/FHA requirements and perform Quality Control reviews; and approved a loan without checking the Credit Alert Interactive Voice Response System (CAIVRS).

13. Bank of New York, New York, NY

Action: Considered the matter and took no action at this time.

Cause: Information received by HUD.

14. California Empire Financial Group, Inc., Rancho Cucamonga, CA

Action: Proposed settlement agreement that would include the indemnification on eight loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $22,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

15. Charter Mortgage Corporation, Ft. Lauderdale, FL

Action: Permanently withdrew the HUD/FHA approval.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: failing to remit Up Front Mortgage Insurance Premiums (UFMIPs) to HUD/FHA within 15 days of loan closing and to remit late charges and interest payments; failingre to submit loans for endorsement in a timely manner; failing to implement and maintain an adequate Quality Control Plan for the origination of HUD/FHA-insured mortgages; and using false and misleading advertising.

16. CHM Mortgage, LLC, El Segundo, CA

Action: Prior to being considered by the Board, CHM voluntarily withdrew its HUD/FHA approval. The Board voted to extend CHM's period of withdrawal to a period of three years; and the payment to the Department of a civil money penalty of $8,500.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: Failure to review the governmentwide list of debarred, suspended and excluded parties and HUD's limited denial of participation list; failure to implement and maintain an adequate Quality Control Plan for the origination of HUD/FHA-insured mortgages; and failure to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act.

17. Community Family Mortgage, Inc., Atlanta, GA

Action: Proposed settlement agreement that would include the payment to the Department of a civil money penalty of $6,500; submit to the

Department all Home Mortgage Disclosure Act data since 1993; and for the previous two calendar years, audit its HUD/FHA activity and refund all unallowable fees charged mortgagors.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

18. Community Home Mortgage Corporation, Melville, NY

Action: Proposed settlement agreement that would include the indemnification on up to eighteen loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $120,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

19. Countrywide Home Loans, Inc., Calbasas, CA

Action: Proposed settlement agreement that would include the indemnification on up to five loans in which violations of the HUD/FHA requirements and regulations occurred; enhance its Quality Control Plan; and the payment to the Department of $30,000.

Cause: A review by HUD's Quality Assurance Division's contractor discovered failures to comply with HUD/FHA Loss Mitigation requirements and other serious violations of HUD/FHA's servicing requirements and regulations.

20. County Mortgage Company, Inc., West Caldwell, NJ

Action: Proposed settlement agreement that would include the indemnification on up to eleven loans in which violations of the HUD/FHA requirements and regulations occurred; the requirement of County Mortgage Company, Inc. to enhance its Quality Control Program; the payment to the Department of a civil money penalty of $25,000; and the requirement that its underwriters obtain additional training in underwriting HUD/FHA-insured mortgages.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

21. DiverseAmerican Mortgage Company, East Greenwich, RI

Action: Permanently withdrew the HUD/FHA approval; and the payment to the Department of a civil money penalty of $250,000.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: failing to remit Up-Front Mortgage Insurance Premiums (UFMIP) to HUD/FHA; and failing to remit UFMIP to HUD/FHA in a timely manner.

22. Eagle Home Loans and Realty, Inc., Sacramento, CA

Action: Proposed settlement agreement that would include the indemnification on two loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $1,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

23. Empire Funding Corporation, Austin, TX

Action: Proposed the withdrawal of HUD/FHA approval for a three year period; and the payment to the Department of a civil money penalty of $60,500. This action occurred as the result of the Department's inability to finalize a settlement agreement with Empire proposed at the February 18, 1999 Mortgagee Review Board meeting.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: failure to re-approve two dealers in a timely manner and funding ten Title I loans from non-approved dealers; and failure to ensure that detailed descriptions of the proposed improvements for five loans were provided by the borrowers.

24. Executive Funding Services, Camp Springs, MD

Action: Proposed a settlement agreement that would include requiring Executive Funding Services to buydown two overinsured loans; the indemnification on eight loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $10,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

25. Express National Mortgage, Norwalk, CA

Action: Proposed settlement agreement that would include the indemnification on up to six loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $16,500.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

26. Federal Home Mortgage Corporation, Columbus, OH

Action: Proposed settlement agreement that would include Federal Home Mortgage Corporation agreeing to change its name to comply with the provisions of Title 18 United States Code Section 709 and the payment to the Department of a civil money penalty of $5,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

27. Fidelity Home Mortgage Corporation, Timonium, MD

Action: Proposed settlement agreement that would include the indemnification on up to eight loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $27,500.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

28. Financial Mortgage Corporation, Ft. Washington, PA

Action: Proposed settlement agreement that would include the indemnification on one loan in which violations of the HUD/FHA requirements and regulations occurred;

and the payment to the Department of a civil money penalty of $1,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

29. Financial Research Services, Inc., Miami, FL

Action: Withdrew the HUD/FHA approval for a period of ten years and the payment to the Department of a civil money penalty of $75,000.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: failure to remit loan pay-off funds to holders of GNMA mortgage-backed securities; submission of false certifications and documentation to secure late endorsement on defaulted loans; failure to properly account for and disburse 203(k) escrow funds; failure to conduct quality control reviews; failure to properly originate 203(h) loans; failure to properly calculate effective income; failure to verify the source of the mortgagors' funds to close; failure to initiate early contact with delinquent borrowers; failure to use realistic repayment plans for defaulted mortgages; failure to conduct an acceptable Management Review prior to approving foreclosure; misuse of borrower escrow funds; and failure to retain records.

30. First Mortgage of Indiana, Indianapolis, IN

Action: Proposed a settlement agreement that would include the indemnification on up to six loans in which violations of the HUD/FHA requirements and regulations occurred; perform an audit, by an independent CPA, of all HUD/FHA-insured mortgages originated by First Mortgage of Indiana during the last two years; refund all unallowable fees charged mortgagors; and the payment to the Department of a civil money penalty of $5,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

31. First United Mortgage Company, Kenilworth, NJ

Action: Proposed settlement agreement that would include the indemnification on up to three loans in which violations of the HUD/FHA requirements and regulations occurred; audit the past four years of origination activity; refund all improperly collected fees; submit to the Department a proper Quality Control Plan; and the payment to the Department of a civil money penalty of $50,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

32. GAMA Mortgage Corporation, New Orleans, LA

Action: Proposed settlement agreement that would include the payment to the Department of a civil money penalty of $1,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

33. Gateway Funding Diversified Mortgage Services, Conshohocken, PA

Action: Proposed settlement agreement that would include the review and refund of all improper commitment fees charged mortgagors over the last two years; buydown the mortgage amounts in two loans; submit its quality control results to the Department quarterly over the next twelve months; and the payment to the Department of a civil money penalty of $25,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

34. The GM Group Inc., Richardson, TX

Action: Withdrew the HUD/FHA approval for a period of three years; payment to the Department of a civil money penalty of $700,000; and recommended that principals be considered for debarment.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: failing to submit Upfront Mortgage Insurance Premiums (MIP) to HUD in a timely manner; using MIP and escrow funds for operating cash needs; submitting loans for endorsement that did not comply with the late endorsement requirements; and submitting a loan to HUD where the two-year work history was not properly supported and with apparent falsified documentation.

35. Golden Empire Mortgage, Inc., Bakersfield, CA

Action: Proposed settlement agreement that would include the indemnification on up to thirty-one loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $30,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

36. Greystone Servicing Corporation, New York, NY

Action: Considered the matter and decided to take no further action.

Cause: A review by HUD's Quality Assurance Division and Office of Inspector General.

37. Heartland Mortgage, Inc., Tucson, AZ

Action: Proposed settlement agreement that would include the indemnification on one loan in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $5,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplements the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

38. Hollywood Mortgage, Inc., Palmdale, CA

Action: Proposed withdrawal of the HUD/FHA approval for a period of three years; and the proposed payment to the Department of a civil money penalty of $28,600. This action resulted from the Department's inability to finalize a settlement agreement proposed at the October 21, 1999 Mortgagee Review Board meeting.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: falsely certified to information in the loan files; used false documentation in the origination of mortgage loans; failed to implement and maintain a Quality Control Plan; failed to comply with HUD/FHA's annual loan origination reporting requirements which supplement the requirements of the Home Mortgage Disclosure Act; operated as a real estate office using its office space and staff; and allowed employees to engage in business

practices which were, or gave the appearance of, a conflict of interest.

39. Homeowners Mortgage and Equity, Inc., Austin, TX

Action: Proposed settlement agreement that would include the indemnification on three loans in which violations of the HUD/FHA requirements and regulations occurred.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

40. Home Savings of America FSB, Irwindale, CA

Action: Proposed settlement agreement that would include the indemnification on up to six loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $20,000.

Cause: A review by HUD's Quality Assurance Division's contractor discovered violations of HUD/FHA's Loss Mitigation requirements as well as other serious violations of HUD/FHA servicing requirements and regulations.

41. HomeSide Lending, Inc., Jacksonville, FL

Action: Proposed settlement agreement that would include a requirement of HomeSide Lending, Inc. to pay the Department $20,000 to cover the Department's investigative expenses; and a requirement to provide mortgagors with more detailed escrow statements that clearly itemize and separately identify all charges.

Cause: Information on serious violations of HUD/FHA requirements and regulations received from HUD's Real Estate Settlement Procedures Act Enforcement Division.

42. Irwin Mortgage Corp., Indianapolis, IN

Action: Proposed settlement agreement that would include the indemnification on sixteen loans in which violations of the HUD/FHA requirements and regulations occurred.

Cause: A review by HUD's Office of Inspector General discovered serious violations of HUD/FHA requirements and regulations.

43. Island Mortgage Network, Inc.; Melville, NY

Action: Immediately withdrew the HUD/FHA approval in the Buffalo and Albany HUD Office jurisdictions for a period of three years; and the payment to the Department of a civil money penalty of $66,000.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: use of appraisals with incomplete or incorrect information; using falsified documentation or conflicting information to approve HUD/FHA mortgagors; failing to ensure that borrowers met their minimum required investment; approving loans where origination documents passed through the hands of an interested third party; failing to properly verify the source and adequacy of funds for the down payment and/or closing; charging fees which are not in compliance with the HUD/FHA guidelines; failing to provide loan origination documents for review by HUD/FHA; failing to properly display the required FHEO poster; failing to maintain an adequate Quality Control Plan; and submitting loans originated by non-HUD/FHA approved mortgage brokers.

44. James B. Nutter & Company, Kansas City, MO

Action: Proposed settlement agreement that would include the indemnification on loans in which violations of the HUD/FHA's Loss Mitigation and other servicing requirements and regulations occurred; and the payment to the Department of $145,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA Loss Mitigation requirements and other serious violations of HUD/FHA requirements and regulations.

45. J. P. Mortgage Company, North Miami, FL

Action: Withdrew the HUD/FHA approval for a period of three years; and the payment to the Department of a civil money penalty of $75,000.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: failing to comply with HUD/FHA's annual loan origination reporting requirements which supplement the requirements of the Home Mortgage Disclosure Act; failing to monitor overages to ensure they are not being applied in a manner that would violate the Fair Housing Act or the Equal Credit Opportunity Act; failing to establish and implement a quality control plan for the origination of HUD/FHA-insured mortgages; using deceptive or misleading advertising to solicit applicants for Title I loans; using false information to originate HUD/FHA-insured mortgages; permitting the hand-carrying of a Verification of Employment; failing to address discrepancies in documents used to originate HUD/FHA-insured mortgages; failing to ensure that borrowers met their minimum required investment; and failing to satisfy Direct Endorsement underwriter documentation requirements prior to loan closing.

46. J & R Mortgage, Inc., San Mateo, CA

Action: Proposed settlement agreement that would include the indemnification on up to nine loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $25,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

47. Legend Mortgage Company, Lisle, IL

Action: Proposed settlement agreement that would include the indemnification on one loan in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $11,000.

Cause: An audit by HUD's Office of Inspector General discovered serious violations of HUD/FHA requirements and regulations.

48. Liberty Mortgage Corporation, Birmingham, AL

Action: Proposed settlement agreement that would include a requirement of Liberty Mortgage Corporation to more closely monitor its Quality Control Plan; and the payment to the Department of a civil money penalty of $1,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplement the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

49. Madison Home Equities, Inc., Carle Place, NY

Action: Immediately withdrew the HUD/FHA approval for five years; and the payment to the Department of a civil money penalty of $71,500.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: used false certifications on loans regarding its financial interest/relationship to sellers; approved loans where the verification forms passed through the hands of an interested third party; used false documentation or conflicting information to originate loans and

obtain HUD/FHA mortgage insurance; approved mortgage loans where the ratios exceeded HUD/FHA guidelines; failed to document the borrower's source of funds used for downpayment or closing costs; failed to adhere to the credit requirements on mortgage loans; failed to ensure that a borrower met the requirements to purchase a three unit property; failed to properly document irregularities between the appraisal report and the sales contract; and failed to ensure appraisals met the requirements of HUD/FHA.

50. Major Mortgage Corporation, Livonia, MI

Action: Proposed settlement agreement that would include the indemnification on up to fifteen loans in which violations of HUD/FHA requirements and regulations occurred.

Cause: An audit by HUD's Office of Inspector General discovered serious violations of HUD/FHA requirements and regulations.

51. Malone Mortgage Company America, LTD, Carlsbad, CA

Action: Proposed settlement agreement that would include the indemnification on up to one hundred and thirty-nine loans in which violations of the HUD/FHA requirements and regulations occurred; demonstrate Quality Control improvements; perform an audit, by an independent CPA, of all HUD/FHA-insured mortgages originated during the last two years; refund all unallowable fees charged mortgagors; and the payment to the Department of a civil money penalty of $100,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

52. Mical Mortgage Corporation/FINET Holdings Corporation, San Diego, CA

Action: Withdrew the HUD/FHA approval for a period of three years (this extended by two years a prior one year withdrawal action taken by the Department due to failure to submit acceptable financial statements; and the payment to the Department of a civil money penalty of $500,000.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: failing to remit Up-Front Mortgage Insurance Premiums (UFMIP) to HUD/FHA within 15 days from the date of loan closing and to remit late charges and interest penalties; failing to submit loans for endorsement in a timely manner; failing to respond to its own quality control procedures; failing to reporting business changes to HUD/FHA; and failing to have a senior corporate officer designated to conduct exclusively its affairs.

53. Mitchell Financial Services, Inc., Tucson, AZ

Action: Proposed settlement agreement that would include the payment to the Department of a civil money penalty of $15,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

54. ML Pacific Investment Capital d.b.a. Pacific Investment Capital , Anaheim, CA

Action: Withdrew the HUD/FHA approval for a period of three years; and the payment to the Department of a civil money penalty of $40,000.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: failing to implement a Quality Control Plan; failing to ensure adequate face-to-face or telephone interviews were conducted with borrowers; utilizing false information and documentation to originate Title I loans; and permitting strawbuyers to qualify for Title I loans.

55. Molton, Allen & Williams Corporation, Birmingham, AL

Action: Proposed settlement agreement that would include the indemnification on up to twenty-nine loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $20,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA Loss Mitigation requirements and other serious violations of HUD/FHA requirements and regulations.

56. Mortgage Acceptance Corporation, Floral Park, NY

Action: Proposed withdrawal of the HUD/FHA approval for a period of three years and the proposed payment to the Department of a civil money penalty of $75,000.

Cause: A review by HUD's Quality Assurance Division discovered these serious violations of HUD/FHA requirements and regulations: failing to comply with HUD/FHA's annual loan origination reporting requirements which supplement the requirements of the Home Mortgage Disclosure Act; failing to provide loan origination files and documents for review; using falsified or conflicting information in originating FHA insured loans; failing to ensure that mortgagors have met their minimum required investment because the loan exceeded HUD's maximum allowable mortgage amount; failing to conduct a face-to-face or adequate interview with first-time homebuyers; sharing office space with NRER Realty and commingling employees; and failing to implement and maintain an adequate Quality Control Plan.

57. Mortgage by Design, Inc., Brooklyn Park, MN

Action: Proposed settlement agreement that would include the indemnification on up to five loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $2,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

58. Mortgage Co-Op, Inc., Metairie, LA

Action: Proposed settlement agreement that would include the indemnification on three loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $4,000.

Cause: A review by HUD's Quality Assurance Division and a referral from the Department's Denver Homeownership Center's Processing and Underwriting Division disclosed serious violations of HUD/FHA requirements and regulations.

59. Mortgage Mart, Inc., Blue Bell, PA

Action: Payment to the Department of a civil money penalty of $2,500.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplement the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

60. Mortgage Money Center, Carle Place, NY

Action: Proposed settlement agreement that would include the indemnification on up to seven loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $25,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

61. National Charter Mortgage Corporation, Gardena, CA

Action: Proposed settlement agreement that would include adherence to its Quality Control Plan; perform quarterly audits of its payments of Mortgage Insurance Premiums; and the payment to the Department of a civil money penalty of $53,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplement the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

62. Nationsbanc Mortgage Corporation, Charlotte, NC

Action: Proposed settlement agreement that would include the indemnification on up to six loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $29,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

63. Newport Shores Financial, Inc., Aliso Viejo, CA

Action: Proposed settlement agreement that would include a requirement of Newport Shores Financial, Inc. to submit periodic reports to the Department on the operation of its branch offices; and the payment to the Department of a civil money penalty of $25,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

64. Norwest Mortgage, Inc., Des Moines, IA

Action: Proposed settlement agreement that would include the payment to the Department of a civil money penalty of $75,000; and the payment to the Department for the losses suffered, including interest, from Norwest Mortgage, Inc's submission of insurance claims on 39 loans that were subject to a 1996 settlement agreement.

Cause: Failure to comply with a Settlement Agreement entered into with the Mortgagee Review Board.

65. Norwest Mortgage, Inc., Seattle, WA

Action: Proposed settlement agreement that would include the indemnification on twelve loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $50,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

66. Pacific Charter Mortgage Corporation, Los Alamitos, CA

Action: Proposed settlement agreement that would include the requirement of Pacific Charter Mortgage Corporation to monitor its payment of Mortgage Insurance Premiums to ensure all payments are made timely; the indemnification on up to ten loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $100,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

67. Pierucci, Inc. d.b.a. Sunset Mortgage Company, Chadds Ford, PA

Action: Proposed settlement agreement that would include the payment to the Department of a civil money penalty of $5,000; and the agreement of Sunset Mortgage Company to comply with all HUD/FHA requirements and regulations in the future.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

68. Popular Mortgage, Inc. d.b.a. Puerto Rico Home Mortgage, Hato Rey, PR

Action: Proposed settlement agreement that would include the indemnification on up to fifty-four loans in which violations of the HUD/FHA requirements and regulations occurred.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

69. Professional Mortgage Banker's Corporation, Westbury, NY

Action: Proposed settlement agreement that would include the indemnification on up to nine loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $10,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

70. Rhode Island Housing and Mortgage Finance Corporation, Providence, RI

Action: Proposed settlement agreement that would include the payment to the Department of a civil money penalty of $16,500. This action revised a settlement agreement proposed at the February 18, 1999 Mortgagee Review Board meeting.

Cause: A review by HUD's Quality Assurance Division's contractor discovered serious violations of HUD/FHA requirements and regulations.

71. Rockwell Equities, Inc., Jericho, NY

Action: Permanently withdrew the HUD/FHA approval; and proposed the payment to the Department of a civil money penalty of $11,000.

Cause: Failing to comply with the indemnification agreement previously negotiated with HUD's Quality Assurance Division.

72. Ryland Mortgage Company, Columbia, MD

Action: Proposed settlement agreement designed to protect the Department during the period between the indictment of Ryland Mortgage Company and trial. The settlement agreement includes probation until the case was resolved at trial; five year indemnification on all FHA loans originated during the period Ryland was indicted until sixty days after ultimate resolution of the case; loans originated during this period must be sold "servicing released on the secondary market;" and increased auditing of Ryland's HUD/FHA-insured loans during this period. The Mortgagee Review Board considered the matter again after Ryland Mortgage Company pleaded guilty and decided to take no further action.

Cause: Indictment and conviction of Ryland Mortgage Company and certain senior officers.

73. Summit Mortgage Corporation, Houston, TX

Action: Proposed settlement agreement that would include the indemnification on up to twenty-nine loans in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $75,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

74. SunTrust Mortgage, Inc., Atlanta, GA

Action: Proposed settlement agreement that would include the indemnification on up to eighteen loans in which violations of the HUD/FHA requirements and regulations occurred;

and the payment to the Department of a civil money penalty of $54,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA Loss Mitigation requirements and other serious violations of HUD/FHA requirements and regulations.

75. Twins, Inc., Columbia, SC

Action: Proposed settlement agreement that would include the refunding of all unallowable fees to mortgagors; and the payment to the Department of a civil money penalty of $8,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

76. Unicor Funding, Inc., Mission Viejo, CA

Action: Proposed settlement agreement that would include the indemnification on up to twenty-one loans in which violations of the HUD/FHA requirements and regulations occurred; the payment to the Department of a civil money penalty of $42,000; and submit an audit of its compliance with the Title I requirements to the Department after six months.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

77. United Southern Mortgage Corporation of Roanoke, Virginia Beach, VA

Action: Withdrew the HUD/FHA approval for a period of three years; and the payment to the Department of a civil money penalty of $250,000.

Cause: A review by HUD's Quality Assurance Division discovered the failure to remit the Up-Front Mortgage Insurance Premiums (UFMIP) on sixty-two loans to HUD/FHA within fifteen days after loan closing.

78. Washington Mutual Bank, Seattle, WA

Action: Proposed settlement agreement that would include the indemnification on up to ten loans in which violations of the HUD/FHA requirements and regulations occurred; the payment to the Department of a civil money penalty of $25,000; and the submission to the Department of a plan explaining how Washington Mutual Bank will bring its servicing operation into compliance with the Department's Loss Mitigation requirements.

Cause: A review by HUD's Quality Assurance Division's contractor discovered failures to comply with HUD/FHA Loss Mitigation requirements and other serious violations of HUD/FHA requirements and regulations.

79. West Coast Mortgage Securities, Inc., San Diego, CA

Action: Proposed settlement agreement that would include the indemnification on one loan in which violations of the HUD/FHA requirements and regulations occurred; and the payment to the Department of a civil money penalty of $1,000.

Cause: A review by HUD's Quality Assurance Division discovered failures to comply with HUD/FHA's annual loan origination reporting requirements which supplement the requirements of the Home Mortgage Disclosure Act and other serious violations of HUD/FHA requirements and regulations.

80. Whitehall Funding, Inc., Indianapolis, IN

Action: Proposed settlement agreement that would include the payment to the Department of a civil money penalty of $10,000.

Cause: A review by HUD's Quality Assurance Division discovered serious violations of HUD/FHA requirements and regulations.

Dated: August 29, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal, Housing Commissioner, Chairman, Mortgagee Review Board.

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BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information collection to be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (PRA)

ACTION: Information collection renewal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) plans to submit the collection of information requirement described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (PRA). You may obtain copies of the collection requirement and related forms and explanatory material by contacting the Service's Information Collection Clearance Officer at the phone number listed below. The Service is soliciting comment and suggestions on the requirement as described below.

DATES: Interested parties must submit comments on or before November 6, 2000.

ADDRESSES: Interested parties should send comments and suggestions on the requirement to Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or *Rebecca_Mullin@fws.gov* E-mail.

FOR FURTHER INFORMATION CONTACT: Jack Hicks, (703) 358–1851, fax (703) 358–1837, or *Jack_Hicks@fws.gov* E-mail.

SUPPLEMENTARY INFORMATION:

Title of Forms: Federal Aid Grant Application Booklet.

OMB Approval Number: The Service will submit to OMB an approval request before collecting information.

Description and Use: The Service administers several grant programs authorized by the Federal Aid in Wildlife Restoration Act, the Federal Aid in Sport Fish Restoration Act, the Anadromous Fish Conservation Act, the Endangered Species Act, the Clean Vessel Act, the Sportfishing and Boating Safety Act, and the Coastal Wetlands Planning, Protection and Restoration Act. The Service uses the information collected to make awards within these grant programs. This includes determining if the estimated cost is reasonable, the cost sharing is consistent with the applicable program statutes, and other vital information collected through proposals submitted by grant applicants. The State or other grantee uses the booklet as a guide for writing complete proposals including; work proposed, providing specific budget information, identifying proposed cost sharing, and partners if any. The information collected through this document also satisfy special requirements for various approvals for National Environmental Policy Act, National Historic Preservation Act, and other Acts pertaining to grants management in the Federal government. Grant applicants provide the information requested in the Federal Aid Grant Application Booklet in order to receive benefits in the form of grants for purposes outlined in the applicable law. The Service uses the Federal Aid Grant Application Booklet to request complete information needed to determine the eligibility, cost, scope, and appropriateness of the grant applied for. This booklet is designed to cause the minimum impact in the form of hourly burden on grant applicants and still get all the required information.

Supplemental Information: The service plans to submit the following information collection requirements to

OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Frequency: Generally annually.

Description of Respondents: State Government, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), local governments, and other receiving grant funds.

COMPLETION TIME AND ANNUAL RESPONSE AND BURDEN ESTIMATE

Form name	Completion time per application (in hrs.)	Annual response in narrative format	Annual burden (in hrs.)
Grant Application Booklet	80	3,500	280,000
Amendment to Grant Agreement	4	1,750	7,000
Totals		5,250	287,000

Application Booklet for Federal Aid Grants

Part 1 (Cover)

Department of the Interior, U.S. Fish and Wildlife Service, Division of Federal Aid, Grant Programs

Authorized Under the Following Acts

Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–7771)
Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i)
Partnerships for Wildlife Act (16 U.S.C. 3741)
Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954)
Endangered Species Act, Sec 6(h) (16 U.S.C. 1361)
Clean Vessel Act of 1992 (16 U.S.C. 777)

Covering the Following Types of Projects and Grants

Sport Fish Restoration Projects
Wildlife Restoration Projects
Coastal Wetland Restoration
Clean Vessel Pumpout Projects
Outreach and Communications Projects (RBFF Only)
Boating Infrastructure
Partnerships for Wildlife
Endangered Species, Sec 6(h)
Land Acquisition
Coordination
Strategic Planning
Comprehensive Management
Surveys and Inventories
Training and Education
Facilities Development
Construction
Operations and Maintenance
Development
Research
Single and Multi-Project
Habitat and Population Management
Hunter and Aquatic Education

Part 2 (inside front cover)

Draft Information Collection Statement

Information Collection Statement: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501) please note the following information. This information collection is authorized by the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777l), Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), Partnerships for Wildlife Act (16 U.S.C. 3741), and the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954). This information collection covers the following types of grant programs: Sport Fish Restoration, Wildlife Restoration, Coastal Wetland Restoration, Clean Vessel, Outreach and Communications, Boating Infrastructure, Partnerships for Wildlife and Endangered Species [Sec 6(h)]. We are collecting this information relevant to the eligibility, substantiality, relative value, and budget information from applicants in order to make awards of grants under these programs. We are collecting financial and performance information to track cost and accomplishments of these grant programs. Completion of these application and reporting requirements will involve a paperwork burden of approximately 80 hours per grant. Your response to this information collection is voluntary, but necessary to receive benefits in the form of a Grant, and does not carry any premise of confidentiality. 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. This information collection has been approved by OMB and assigned control number 1018–XXXX. The public is invited to submit comments on the accuracy of the estimated average burden hours for application preparation, and to suggest ways in which the burden may be reduced. Comments may be submitted to: Information will be provided in final printing only.

Part 3

Who is eligible to participate in these grant programs and for what purpose? We work with several programs, they are listed below, along with their individual purpose and eligible recipients.

Federal Aid in Wildlife Restoration Programs: Any State fish and wildlife agency of the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa. The purpose of the Wildlife Restoration grants must be for restoration, conservation, management, and enhancement of wild birds and wild mammals, and providing for public use and benefit from these resources. Eligible activities include: educating responsible hunters, shooters and archers in skills, knowledge, and attitudes regarding the safety in firearms, public target ranges development, operations and maintenance either archery or firearm, and activities to increase awareness of benefits, accomplishments, and opportunities created by this program.

The Sport Fish Restoration Programs: Any State fish and wildlife agency of the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa. Grants must be for the

restoration, conservation, management, and enhancement of sport fish, and the provision or public use of and benefits from these resources. Sport fish, by definition, are limited to aquatic, gill breathing, vertebrate animals bearing paired fins, and having material value for sport or recreation. Also eligible are grants which address the enhancement of the public's understanding of water resources and aquatic life forms, and the development of responsible attitudes towards the aquatic environment. Also eligible are activities related to increasing benefits, accomplishments, and opportunities created by this program.

Coastal Wetland Restoration projects: Any State agency designated by the Governor of a coastal State to participate on behalf of the State is eligible. A coastal State is any State bordering on the Atlantic, the Pacific, or the Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and American Samoa are also eligible. Coastal wetlands conservation grants must be for the long-term conservation of lands and waters, hydrology, water quality and fish and wildlife that depend upon these lands and waters. For the Coastal Wetlands Conservation Program, grant work must be in the first tier of counties along the coast of any State except Louisiana.

Clean Vessel projects: Any State fish and wildlife agency of the fifty States and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa. Grants must be for the surveying and planning for installing pumpout/dump stations, and to fund the construction and renovation or maintenance of pumpout/dump stations to be used by recreational vessels, for the purpose of preventing recreational boat sewage from entering U.S. waters. Educational activities are also eligible for funding.

Outreach and Communications Projects [Recreational Boating and Fishing Foundation (RBFF)]: Any State fish and wildlife agency of the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa. These grants are to improve communications with anglers, boaters, and the general public regarding angling and boating opportunities, to reduce barriers to participation in these activities, to advance adoption of sound fishing and boating practices, to promote conservation and the responsible use of the Nation's aquatic resources, and to further safety in fishing and boating.

Boating Infrastructure: Any State fish and wildlife agency of the 50 States as designated by the State government and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa. The purpose of the Boating Infrastructure Grant Program is to provide funds to States for the development and maintenance of facilities for transient nontrailerable recreational vessels.

Partnerships for Wildlife: Any State fish and wildlife agency of the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa in partnership with third parties. The purpose of these projects must be to: Inventory fish and wildlife species; determine and monitor the size, range, and distribution of populations of fish and wildlife species; identify the extent, condition, and location of the significant habitats of fish and wildlife species; identify the significant problems that may adversely affect fish and wildlife species and their significant habitats; take actions to conserve fish and wildlife species and their habitats; or take action which the principal purpose is to provide opportunities for the public to use and enjoy fish and wildlife through nonconsumptive activities. This program applies to any wild members of the animal kingdom that are in an unconfined state, except animals that are: (1) taken for recreation, fur, or food; (2) Federally listed as endangered or threatened species under the Endangered Species Act; or (3) marine mammals defined by the Marine Mammal Protection Act.

Endangered Species Section 6 Grants: Any State agency that has a cooperative agreement with the Secretary of the Interior, as well as the Commonwealth of Puerto Rico; the Commonwealth of the Northern Mariana Islands; Guam; the United States Virgin Islands; and American Samoa. The purpose of the Endangered Species Section 6 Grants program is to provide Federal financial assistance to any State, through its appropriate agency, which has entered into a cooperative agreement to assist in the development of programs for the conservation of endangered and threatened species. Currently, all 50 States, D.C. and the insular territories have such an agreement. Eligible activities include all types of projects (including land acquisition) with the potential of restoring a threatened or endangered species, monitoring of a candidate species or monitoring of a recovered species.

Grant Programs

Wildlife Restoration Act

- Restore and manage wild birds and wild mammals
- Provide for public use of and access to wild birds and wild mammals
- Provide hunter education
- Funded by hunters and recreational shooters
- Outreach

Sport Fish Restoration Act

- Restore and manage sport fish
- Provide for public use of and access to sport fish
- Provide aquatic education
- Funded by anglers and recreational boaters
- Outreach

Coastal Wetlands Planning, Protection and Restoration Act

- Acquire coastal wetlands
- Restore or enhance coastal wetlands' ecosystems
- Provide long-term conservation of coastal lands and waters
- Funded by Sport Fish Restoration account

Endangered Species Act

- Acquisition, enhancement and protection of habitat
- Recovery and conservation of species
- Surveys and research
- Funded under Section 6 of the Act through Congressional appropriation

Partnerships for Wildlife Act

- Inventory and conserve nongame species
- Provide watchable wildlife recreational and educational opportunities
- Identify and manage species and their habitats
- Funded by Congressional appropriations and State and private partners

Clean Vessel Act

- Survey needs and make plans
- Construct and maintain pumpouts and dump stations
- Educate boaters on use of facilities and impacts of overboard discharge
- Funded by Sport Fish Restoration account

And Grant Types

• Coordination—supports administrative activities of Federal Aid Program

• Strategic Plans and Comprehensive Management Systems (CMS)

—permits implementation of grant funding under either of two funding options:

(1) strategic plan for sport fish and/or wildlife resource management or

(2) CMS for all or part of a State agency's resource management

—allows for funding a grant to develop either of the two funding options above

• Land Acquisition—provides for acquisition of lands, waters, or access

• Operations and Maintenance—provides for operations and maintenance of facilities supporting federal aid objectives

• Development

—Population Management—supports restoration and management of sport fish and wildlife populations through stocking or transplant efforts

—Habitat Management—supports creation and improvement of habitat for sport fish and wildlife populations

—Facilities Construction—supports activities providing public access to or enhancing public use of wildlife or sport fish resources, and supports development of facilities for educational or administrative purposes that further federal aid objectives

• Research—supports research on sport fish and wildlife management issues

• Surveys and Inventories—supports surveys of sport fish and wildlife populations

• Hunter and Aquatic Education

—Educates hunters to be responsible

—Provides education or training on aquatic resources

—Supports construction of educational facilities

—Supports construction of shooting ranges

• Technical Guidance—provides technical guidance to other government agencies and private entities

• Outreach [Recreational Boating and Fishing Foundation (RBFF)]—ensures stakeholders are informed about the Federal Aid Program

Part 4

A. Instructions

(1) Agencies shall use the following standard application forms when applying for Federal Aid Grants. These forms, in PDF fillable/printable format, can be found at the Federal Aid Training Program webpage at http://www.nctc.fws.gov/fedaid/toolkit/toolkit.pdf. At your request, the Regional Office will mail a diskette or CD with fillable forms in PDF format for your use on any personal computer and printer.

Application

SF–424 Face Sheet,
and as appropriate:
SF–424A Budget Information (Non-Construction)
SF–424B Standard Assurances (Non-Construction)
SF–424C Budget Information (Construction)
SF–424D Standard Assurances (Construction)

Financial

SF–269
SF–270

Lobbying

SF–LLL

Other Assurances

DI–2010
National Environmental Policy Act Compliance
Endangered Species Act Section 7 Compliance
National Historic Preservation Act Compliance
Suspension and Debarment Certification
Drug Free Environment Certification

And The Following U.S. Fish and Wildlife Service Forms As Applicable

3–1552 Grant Agreement (OMB Approval 1018–0049)
3–1591 Amendment to Grant Agreement (OMB Approval 1018–0049)

Complete the SF–424 face sheet and the appropriate parts, SF–424B assurances for nonconstruction projects and SF–424D assurances for construction projects.

A Grant Agreement (3–1552) or Amendment to Grant Agreement (3–1591) form is required for all grants. Complete and have it signed by an Agency Official authorized to do so and include it with all grant proposal submissions.

Usually volunteer services are used for in-kind match. These are specific requirements to document the value of this on the SF–424, in budget/cost info, and in performance reports. See 43 CFR 12.64 for specific guidance on in-kind match, especially how to calculate the value of volunteer services used as in-kind. There are also specific requirements in 43 CFR 12.64 for time accounting and documentation of volunteer time.

Part 5

A preapplication shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds $100,000, unless the Federal agency determines that a preapplication is not needed. A preapplication is used to:

(a) Establish communication between the agency and the applicant,

(b) Determine the applicant's eligibility,

(c) Determine how well the project can compete with similar projects from others, and

(d) Discourage any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications.

Budgets

Applicants shall use the appropriate Budget Information and Standard Assurances on the SF–424 for either construction or non-construction projects. They shall use the construction version when the major purpose of the project or program is construction, land acquisition or land development.

Budgets shall provide an estimated total by project objective and should match the objectives described in the proposal (see instructions for proposals below). Budget estimates are entered on the Grant Agreement 3–1552 or the Amendment to Grant Agreement 3–1591, the obligating documents.

Attach a schedule listing projects and dollar amounts within a grant. The total from the schedule should match the total on the Grant Agreement or Amendment to Grant Agreement.

Example:
(Name of Grant) Grant XX FY–XX
Grant Number XX
Start Date _____ End Date_____

Project	Estimated cost
A O&M	WR 600,000
B Habitat improvement	SFR 250,000
C Construction	BA 20,000
Total	[1] 870,000

WR=Regular Wildlife Restoration.
SFR=Regular Sport Fish Restoration.
BA=SFR, Boating Access.
[1] This total goes to Grant Agreement or Amendment.

Grant Proposals

Applicants should include a program narrative statement for each separate project under a grant proposal which is based on the following instructions:

(a) *Objectives and need for assistance.* Pinpoint any relevant physical, economic, social, financial, institutional, or other problems

requiring a solution. Demonstrate the need for the assistance and state the principal and any subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included, footnoted, or referenced.

(b) *Results or benefits expected.* Identify costs and benefits to be derived. For example, show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public. For all projects list benefits and to whom or what resource, and quantify them in a standard measure such as dollars, acres, miles . . . etc.

(c) *Approach.* Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each assistance program. Cite factors which might accelerate or decelerate the work and reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved and target dates for completion, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and target expected completion dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

(d) *Geographic location.* Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached. Add latitude and longitude where possible, this is required for all site specific development, such as boating access, construction, or land acquisition projects.

(e) *If applicable, provide the following information:*

(1) For research and demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project.

(2) Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance.

(3) Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify.

(4) For other requests for changes, or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if the individual budget items have changes more than the prescribed limits, explain and justify the change and its effect on the project.

(f) For the following types of programs, the Regional Office may request the following additional information:

Additionally for:

1. *Federal Aid in Wildlife Restoration:* For Hunter Education grants, "If the work includes the construction of training facilities such as ranges, provide a description of each facility by type, capacity, and cost."

2. *Boating Infrastructure Projects:* How does this project benefit the public and how is that benefit measured; the BIG programs requires that applicants submit a Schedule of Fees, providing the fees for public use of facilities constructed with BIG funds; proposals will need to respond to the ranking criteria in 50 CFR 86.60.

3. *Partnerships for Wildlife Projects:* Describe the partnership involved in this project and what their relative contribution to the partnership is;

4. *All lands acquisition projects, regardless of program must include:* Environmental Compliance, Legal Description of the Property, An Appraisal, A Review Appraisal, Statement of Just Compensation, Purchase Option/Agreement, and, after the property has been purchased and the Grant closed, a Title Insurance Policy or Title Certificate. If application is made under one of the exceptions listed in 49 CFR 24, evidence of compliance with the exception must be provided.

5. *Section 6 of the Endangered Species Act:* Prerequisites for participation in grants under Sec. 6 are that the State establishes and maintains an adequate and active program for the conservation of endangered and threatened species [50 CFR 81.2], and has entered into a Cooperative Agreement with the Secretary of the Interior [50 CFR 81.3] which must be renewed annually. Federal payments shall not exceed 75 percent of the program costs, except when two or more states having a common interest in one or more endangered or threatened species and may enter jointly into an agreement with the Secretary, and thereby increase the Federal share to 90% [50 CFR 81.8].

6. *Surveys and Inventory:* Address each of the following factors.

a. *Adequacy:* Are the data answering the decision-makers' questions? The review should evaluate whether the date acquired from the survey are actually meeting the stated purpose. Analysis of trend data will identify whether data being collected are sufficient in answering the agency's management questions or whether data gaps exist. Timeliness of data collection, analysis and availability is important.

b. *Necessity:* Are the data used by decision makers? In determining the necessity of a particular survey, consideration should be given to what data are actually being collected and their use in management decisions. Survey utility should be considered in the context of the agency's data needs, given necessary prioritization and allocation of staff and monetary resources.

c. *Reliability:* Are the decision makers confident in the data? Survey design should be based on sound science and key results should be statistically reliable. A review of the literature will show whether the methodology is still current or if there are other state-of-the-art techniques that might prove more suitable. Validity of the survey approach and whether assumptions are met should be considered as well as whether sample sizes are sufficient to achieve desired levels of precision.

d. *Efficiency:* Are the data being collected in a cost efficient manner? Data collection is costly, both in staff time and dollars expended. The cost of data collection and analysis should be assessed relative to applicability and use of the data by decision makers.

7. All projects must meet all applicable NEPA, Endangered Species Act (Section 7), and National Historic Preservation Act requirements.

Information will be collected as mandated under those Acts to satisfy compliance requirements. (This burden is included in the 80 hour estimate per application.)

BILLING CODE 4310–55–M

BILLING CODE 4310–55–C

Sportfish and Wildlife Grant - Compliance Issue Matrix

Compliance Issue / Grant Type	Historic Area SHPO	NEPA	Endangered Species Section 7	Clearing House	Wetland - Floodplain issues	ADA Handicap Access	Land Acquisition Procedures	COE Permit	Coastal Zone	Exotic Animals	Animal Welfare	Coastal Barriers	State/Local Permits
Coordination		X		X									?
Planning		X		X									?
Land Acquisition		X		X			X						?
Operation & Maintenance Facilities		X		X		X		X	X				?
Development													
Population Management		X	X	X						X			?
Habitat Management	X	X	X	X	X					X		X	?
Facilities Construction	X	X	X	X	X	X		X	X			X	?
Research		X	X	X						X	X		?
Survey/ Inventory		X	X	X							X		?
Education													
Training		X		X		X					X		?
Facilities	X	X	X	X	X	X		X		X		X	?
Tech Guidance		X	X	X									?
Outreach		X		X									?

Part 6—Financial and Accomplishment and Financial Reporting

Accomplishment and Performance

Accomplishment and Performance reports shall compare the proposed work, approved as part of the Grant Agreement, with the actual work accomplished, any deviation, including, but not limited to, cost, time, quality, or quantity shall be reported.

Financial Reports

Grantees shall use the SF–269 series documents provided by our Regional Offices, on our website, diskette or CD.

Payment

How do grantees get paid? Payments are made only to grantee officials authorized to enter into grant agreements and request funds. Payments to grantees are made for the Federal share of allowable costs incurred by the grantee in accomplishing approved grants. All payments are subject to final determination of allowability based on audit.

a. Requests for payments by check are submitted on Standard Form SF–270 Request for Reimbursement. Grantees must submit a SF–270 and supporting documentation to the FWS Project Leader, who will review, approve, and forward to USFWS Finance for processing the payment.

Note: Grantees will be told at the time the grant is issued if they are a regular or special grantee.

b. For regular grants, payments within 24 hours by Electronic Fund Transfer (EFT) from the grantor are accomplished by completing a SF–1199A Direct Deposit Sign Up Form and forwarding it to Health and Human Services (address at FWS Regional Offices) for authorization in the payment management system SMARTLINK. Requests for payment are submitted by grantee directly to SMARTLINK, payment is monitored/authorized by the FWS Regional Office.

c. For special grants, payments within 24 hours by Electronic Fund Transfer (EFT) from the grantor are accomplished by completing a SF–1199A Direct Deposit Sign Up Form and forwarding it to Health and Human Services (address at FWS Regional Offices) for authorization in the payment management system SMARTLINK. Funds are then requested by submitting through FAX or E-mail an invoice/request for review and approval by the FWS project leader. After approval is received, the grantee may request funds electronically through SMARTLINK.

Part 7

The U.S. Fish and Wildlife Service (Service), Division of Federal Aid awards grants to successful applicants from States and certain other entities to benefit fish and wildlife resources. Applications may be mailed to the following addresses for review by the Regional office serving your need.

Region 1: AS–CA–GU–HI–ID–NV–OR–MP–WA	U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232–4181.	Comm: (503) 231–6128, FAX: (503) 231–6996.
Region 2: AZ–NM–OK–TX	U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306 OR 625 Silver SW, Suite 325, Albuquerque, NM 87102	Comm: (505) 248–7450, FAX: (505) 248–7471.
Region 3: IA–IL–IN–MI–MN–MO–OH–WI	U.S. Fish and Wildlife Service, 1 Federal Drive, Ft. Snelling, MN 55111–4056.	Comm: (612) 713–5130, FAX: (612) 713–5290.
Region 4: AL–AR–FL–GA–KY–LA–MS–NC–PR–SC–TN–VI.	U.S. Fish and Wildlife Service, 1875 Century Blvd., Suite 324, Atlanta, GA 30345.	Comm: (404) 679–4159, FAX: (404) 679–4160.
Region 5: CT–DC–DE–MA–MD–ME–NH–NJ–NY–RI–VA–VT–WV–PA.	U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	Comm: (413) 253–8508, FAX: (413) 253–8487.
Region 6: CO–KS–MT–ND–NE–SD–UT–WY	U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225 OR Lake Plaza North Bldg., 134 Union Blvd., 4th Floor, Lakewood, CO 80228.	Comm: (303) 236–7392, FAX: (303) 236–8192.
Region 7: AK	U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.	Comm: (907) 786–3435, FAX: (907) 786–3575.
Washington, D.C.: National Issues and Program Coordination.	U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 140, Arlington, VA 22203.	Comm: (703) 358–2156, FAX: (703) 358–1837.

Dated: August 29, 2000.

Rebecca A. Mullin,

U.S. Fish and Wildlife Service Information Collection Officer.

[FR Doc. 00–22597 Filed 9–1–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–912–0777–HN–003E]

Notice of Special Fire Restrictions—Restrictions and Conditions of Use in the South Dakota Field Office, South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Bureau of Land Management Montana State Director Mat Millenbach has initiated Level 4 fire restrictions, effective starting at 12:01 am Mountain Daylight Time Thursday, August 31, 2000, on the BLM lands in the South Dakota counties listed below. These restrictions are in response to the region's increasing fire potentials, the current level of fire activity, and the current scarcity of fire suppression resources.

The Level 4 fire restrictions apply to BLM lands in: Fall River, Custer, Pennington, Lawrence, Butte, Harding, Meade, Perkins, and Stanley counties.

With Level 4 fire restrictions, the following activities are prohibited on BLM managed lands. Building, maintaining, attending, or using a campfire or any open fire is prohibited (43 CFR 9212.1(h)). Gas and liquid-fueled stoves and lanterns are still permitted at a signed developed, designated recreation site or campground.

Contained units, campers, trailers, etc. are not restricted to designated areas if cooking within the contained unit. This includes pickups with toppers, but not an open pickup bed. Boats on water are considered a contained unit.

Camping in contained units is confined to areas immediately adjacent to open roads. Possessing or using motorized vehicles such as, but not limited to cars, trucks, trail bikes, motorcycles and all terrain vehicles off of cleared roads is prohibited except for persons with grazing, oil and gas or mining permit performing activities in accordance with their permit. Cleared roads are defined as roads cleared of

vegetation shoulder to shoulder (43 CFR 9212.1(h)).

Travel via foot or bicycle will be allowed on roads that have been closed due to the extreme fire danger.

Smoking, except within an enclosed vehicle or building; at an improved place of habitation; at a developed, designated recreation site or campground; or while stopped in an area at least 3 feet in diameter that is cleared of all flammable material, is prohibited (43 CFR 9212.1(h)).

Use of chainsaws or other equipment with internal combustion engines for felling, bucking, skidding/wood cutting, road-building, and other high fire risk operations is prohibited. Exceptions are helicopter yarding and earth moving on areas of cleared and bare soil. Sawing incidental to loading operations on cleared landings is not necessarily restricted (43 CFR 9212.1(h)).

Welding, blasting (except seismic operations confined by ten or more feet of soil, sand or cuttings), and other activities with a high potential for causing wildland fires are prohibited (43 CFR 9212.1(h)).

A patrol is required for a period of two hours following the cessation of all work activity. The patrol person's responsibilities include checking for compliance with required fire precautions.

Exemptions

Exemptions to the above prohibitions are allowed only for any Federal, State, or local officer, or member of an organized rescue, firefighting force or law enforcement in the performance of an official duty, or persons with a permit or written authorization allowing the otherwise prohibited act or omission.

Authority for these prohibitions is pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, *et seq.*), Sections 302(b) and 301(a); and Title 43 of the Code of Federal Regulations, Part 9210 (Fire Management), Subpart 9212 (Wildfire Prevention).

These restrictions will become effective at 12:01 a.m., Mountain Daylight Time, Thursday, August 31, 2000, and will remain in effect until rescinded or revoked.

Violation of this prohibition is punishable by a fine of not more than $1,000 or imprisonment for not more than 12 months, or both.

DATES: Restrictions go into effect at 12:01 am on Thursday, August 31, 2000, and will remain in effect until further notice.

ADDRESSES: Comments should be sent to BLM Montana State Director, Attention: Pat Mullaney, P.O. Box 36800, Billings, Montana 59107–6800.

FOR FURTHER INFORMATION CONTACT: Pat Mullaney, Fire Management Specialist, 406–896–2915.

Dated: August 30, 2000.

Roberta A. Moltzen,

Acting State Director.

[FR Doc. 00–22737 Filed 8–31–00; 1:14 pm]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–00–1320–EL–P; NDM 90322]

Notice of Invitation—Coal Exploration License Application NDM 90322

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of Invitation—Coal Exploration License Application NDM 90322.

SUMMARY: Members of the public are hereby invited to participate with The Coteau Properties Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Mercer County, North Dakota:

T. 145 N., R. 86 W., 5th P.M.
Sec. 4: Lots 3, 4, SW¼NW¼
T. 144 N. R. 88 W., 5th P.M.
Sec. 4: Lots 1, 2, S½NE¼, S½
Sec. 6: Lots 1, 2, SW¼NE¼ less 4.34 acres described by metes and bounds, SE¼SE¼
Sec. 8: N½N½, SE¼NE¼, S½NW¼
T. 145 N., R. 88 W., 5th P.M.
Sec. 4: S½SE¼
Sec. 10: N½
Sec. 28: NE¼NE¼, S½NE¼, SE¼NW¼, S½
1,920.94 acres.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and The Coteau Properties Company, 2000 Schafer Street, Suite D, Bismarck, North Dakota 58502. Such written notice must refer to serial number NDM 90322 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the *Beulah Beacon* newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the *Beulah Beacon*, Beulah, North Dakota.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by The Coteau Properties Company, is available for public inspection at the Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Either Stephen Van Matre, Mining Engineer, or Bettie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59017–6800, telephone (406) 896–5082 or (406) 896–5063, respectively.

Dated: August 29, 2000.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 00–22608 Filed 9–1–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–1310–EU; NM 101522/G010–G0–00254]

Notice of Intent To Prepare Two Environmental Impact Statements and Conduct Scoping Meeting; Land Exchanges With the Pueblos of Santo Domingo and San Felipe, Sandoval and Santa Fe Counties, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice (AMENDMENT). **Federal Register** Notice (64 FR 216) published in the issue dated November 9, 1999 is amended to include the following additional federal lands:

New Mexico Principle Meridian

T. 12 N., R. 6 E.,
Sec. 7, lots 3 to 6, inclusive;
Sec. 10, E½NE¼NE¼W½SW¼NE¼, S½NW¼, N½SW¼, SE¼SW¼ and W½SE¼;
Sec. 11, NW¼NW¼;
Sec. 17, N½N½, SE¼NE¼ and NE¼SE¼;
Sec. 18, NE¼;
Sec. 21, N½NE¼ and SE¼NE¼;
Sec. 22, lots 1 to 4, inclusive, S½N½ and NW¼NW¼;
Sec. 23, lots 1 to 4, inclusive.

Containing 1,477 acres, more or less.

Dated: June 28, 2000.

Deborah Charley,

Acting Albuquerque Field Manager.

[FR Doc. 00–18382 Filed 9–1–00; 8:45 am]

BILLING CODE 4310–AG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–930–1220–EB]

Campground Fees for BLM-Administered Campgrounds In Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplementary rules.

SUMMARY: Notice is hereby given that effective September 5, 2000, the Bureau of Land Management (BLM) is establishing recreation use fees for campgrounds and picnic grounds that did not have existing supplementary rules related to recreation use fees. BLM is also reaffirming existing supplementary rules for BLM-administered campgrounds and picnic grounds throughout Utah. We are taking this action to authorize the collection of fees from those who use the campgrounds. This action has the effect of requiring users to pay fees for the use of certain designated campgrounds and picnic grounds.

FOR FURTHER INFORMATION CONTACT: Suzanne Garcia, BLM Utah State Office (UT–934), 324 South State Street, Suite 301, Salt Lake City, Utah 84111 (801) 539–4223.

SUPPLEMENTARY INFORMATION: The authority for these Supplementary Rules is contained in the Code of Federal Regulations, Title 43, Sec. 8365.1–6, Supplementary Rules. Violation of any supplementary rule by a member of the public, except for the provisions of Sec. 8365.1–6, are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Federal Regulations, Title 43, Sec. 8360.0–7 violations of supplementary rules authorized by Sec. 8365.1–6 are punishable in the same manner. This supplementary rule authorizes the establishment and re-affirmation of recreation fees at all existing fee campgrounds on BLM administered lands in Utah. The following campgrounds and picnic areas are subject to recreation fees: *Salt Lake Field Office:* Simpson Springs, Clover Springs, Birch Creek, Little Creek *Vernal Field Office:* Bridge Hollow, Indian Crossing *Fillmore Field Office:* Oasis, Sand Mountain, White Sands, Jericho Picnic Area *Hanksville Field Station:* Starr Spring, Lonesome Beaver, McMillan Spring *Moab Field Office:* Spring, Hatch Point, Wind Whistle, Hals Canyon, Goose Island, Negro Bill, Drinks Canyon, Oak Grove, Big Bend, Upper Big Bend, Hittle Bottom, Dewey Bridge, Jaycee Park, Goldbar, Kings Bottom, Moonflower, Hunter Canyon, Echo, Sand Flats Recreation Area Campsites, Fisher Tower, Kens Lake, Williams Bottom, Westwater Ranger Station, Highway 313 Campsites *Cedar City Field Office:* Calf Creek *Price Field Office:* Price Canyon, San Raphael Bridge Recreation Site, Cleveland Lloyd Dinosaur Quarry *Kanab Field Office:* White House, Ponderosa Grove *Grand Staircase-Escalante National Monument:* Deer Creek, Calf Creek *St. George Field Office:* Red Cliffs, Baker Dam *Monticello Field Office:* Sand Island.

Sally Wisely,

State Director, Utah.

[FR Doc. 00–19618 Filed 9–1–00; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–1630/PD]

Camping and Firearms Restrictions

ACTION: Proposed Supplementary Rules and Written Orders.

SUMMARY: In previous **Federal Register** Notices, the Bureau of Land Management (BLM) has enacted numerous Supplementary Rules and Orders to provide management and protection of Public Lands and resources. The BLM is republishing these existing Supplementary Rules and Orders to correct typographical errors, correct administrative errors, to review the need for the Supplementary Rule, and to provide for additional public comment. Each existing Supplementary Rule and Order is written here in its entirety with changes/additions in *italics* and deletions in parenthesis.

Proposed Supplementary Rules: South Yuba River

Camping and Firearms Use Restriction *Supplementary Rules* for the South Yuba Recreation Area. Published **Federal Register**, volume 51 number 99, May 22, 1986.

Agency: Bureau of Land Management, Interior.

Action: Establishment of camping, day use, and firearms use *Supplementary Rules* on Public Lands within the South Yuba Recreation Area of the Folsom *Field Office*, California. *These Supplementary rules shall apply to all public lands within sections 1 and 2, Township 16 north, Range 7 east; sections 25, 26, 27, 34, 35, 36, Township 17 north, Range 7 east; sections 13, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, Township 17 north, Range 8 east; sections 7, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 29, 30, Township 17 north, Range 9 east; all of the Mt. Diablo meridian. Supplementary Rules:*

(a) No person shall *camp within the area described as* one quarter mile downstream and one half mile *upstream* from Edwards Crossing *bridge and within one quarter mile of the South Yuba River and within one quarter mile on each side of the South Yuba River.*

(b) (Camping will be authorized for a period not to exceed 14 days in any 90 day period outside the day use area) DELETE.

(b) No person shall *occupy a* campsite in the South Yuba Campground with no more than two motor vehicles *or more than* eight adults.

(c) No person shall discharge a firearm within one *half* (quarter) mile of the *South Yuba Campground* (all developed campgrounds) and the day use area *described in (a).*

(d) No person shall use, build, attend, or maintain a campfire within the day use area described in (a).

(e) No person shall operate a motor vehicle on the South Yuba Trail.

(f) No person shall operate a motor vehicle within one quarter mile of each side of the South Yuba River except on roads and trails designated for motorized use.

The following Supplementary Rules shall apply only to Hoyt's Crossing Area, specifically to all public land within sections 28 and 34, Township 17 north, Range 8 east of the Mt. Diablo meridian. The Bureau of Land Management established Supplementary Rules (**Federal Register**, volume 63, number 126, July 1, 1998) for the management of recreational uses on public lands adjacent to the South Yuba River at Hoyt's Crossing. This action was necessary to limit adverse impacts to public lands while long term planning is underway. The California State Parks and the County of Nevada urged BLM to enact restrictions in the Hoyt's Crossing area to reduce ongoing problems. These Supplementary Rules will protect the resources and the recreational experience until planning is completed.

(g) No person shall camp.

(h) No person shall build, maintain, attend, or use a campfire.

(i) No person shall possess or consume any alcoholic beverage.

(j) No person shall possess any bottle or container made of glass.

A firearm is defined under Title 18, United States Code, section 921(a)(3). *Camping is defined as the use, construction, or taking possession of public lands using tents, shacks,*

leantos, tarps, vehicles, huts, blankets, or sleeping bags. Campfire is defined as a controlled fire occurring out of doors used for cooking, branding, personal warmth, lighting, ceremonial, or esthetic purposes. The term alcoholic beverage *includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.*

Supplemental Information: The purpose of these *Supplementary Rules* is to protect resources of the public lands, persons, and property. Authority for these *Supplementary Rules* is contained in the Code of Federal Regulations, Title 43, section 8365.1–6. Any person who fails to comply with these *Supplementary Rules* may be subject to a fine not to exceed 100,000 dollars and/or 12 months imprisonment. *These penalties are specified in United States Code, Title 43, section 303, and united States Code, Title 18, section 3623. Federal, state, and local law enforcement personnel and emergency service personnel, while performing official duties, are exempt from these Supplementary Rules.*

Proposed Written Orders: North Fork American River

Published Federal Register as Closure Order—volume 53, number 24, February 5, 1988.

Agency: Bureau of Land Management, Interior.

Action: Closure of all public lands administered by the Bureau of Land Management within the boundaries of the North Fork of the American River Wild and Scenic corridor to the operation or possession of motorized vehicles or equipment and other restrictions. *These Written Orders shall apply on public lands described from the BLM boundary upstream from the Iowa Hill Road bridge (approximately one eighth mile upstream from the bridge) east to the National Forest boundary and within one quarter mile of each side of the river. These public lands are contained in section 36, Township 15 north, Range 9 east; and sections 1, 2, 9, 10, 11, 14, 15, 16, 20, 21, 22, 28, 29, 30, 31, and 32, Township 15 north, Range 10 east; of the Mt. Diablo meridian.* Summary: The BLM section of the North Fork of the American River was classified "wild" by the Wild and Scenic River Act as amended (public law 95–625, November 10, 1978). These Written Orders are necessary to insure public use is consistent with the Act.

Written Order:

(a) No person shall use or possess a motorized vehicle or motorized equipment.

(b) No person shall operate a motorized vehicle on the Steven's Trail.

(c) No person shall operate a motor vehicle except on roads and trails designated for motorized use.

(d) No person shall camp more than fourteen (14) days in any ninety (90) day period. Supplemental Information: Camping is defined as the use, construction, or taking possession of public lands using tents, shacks, leantos, tarps vehicles, huts, blankets, or sleeping bag. The authority for this Written Order is contained in the Code of Federal Regulations, Title 43, section 8351.2–1 Any person who fails to comply with *this Written Order* may be subject to a fine not to exceed 500 dollars and/or imprisonment not to exceed 6 months. These penalties are specified in the Code of Federal Regulations, Title 43, section 8451.2–1(f). The following persons are exempt from this Written Order: 1. Any Federal, state, local government officer or member of an organized rescue or fire suppression force in the performance of an official duty, 2. Persons with written permission authorizing the otherwise prohibited act or omission.

Proposed Supplementary Rules; Red Hills Area of Critical Environmental Concern

Published **Federal Register** as Restriction Order, volume 49, number 97, May 17, 1984.

Agency: Bureau of Land Management, Interior.

Action: Establishment of firearms *and vehicle use restrictions in the Red Hills Area of Environmental Concern. These Supplementary Rules apply within the Red Hills Area of Environmental Concern as described in Federal Register, volume 50, number 46, March 8, 1985; specifically on all public lands within section 36, Township 1 south, Range 13 east; and sections 6, 7, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 34, 35, Township 1 south, Range 14 east in the Mt. Diablo meridian.*

Supplementary Rules:

(a) No person shall discharge any firearm. For the purposes of this *Supplementary Rule*, a firearm is defined as under United States Code, Title 18, section 921(a)(3). Licensed sport hunters in the legitimate and legal pursuit of game with an appropriate firearms and during the proper season as defined by the California Fish and Game shall be exempt from this Supplementary Rule.

(b) No person shall operate a motor vehicle off designated routes of travel.

(c) No person shall operate a motor vehicle unless the vehicle is registered for street use in accordance with the California Vehicle Code, section 4000a.

Supplemental Information: Authority for these Supplementary Rules is contained in the Code of Federal Regulations, Title 43, section 8364.1. Any person who fails to comply with these Supplementary Rules may be subject to fines not to exceed 100,000 dollars and/or not to exceed imprisonment of 12 months. These penalties are specified by United States Code, Title 43, section 303; and United States Code, Title 18, section 3623. Federal, state, and local law enforcement personnel and emergency service personnel, while performing official duties, are exempt from these Supplementary Rules.

Proposed Written Orders: Merced River Wild and Scenic River

Published **Federal Register**, volume 51, number 54, March 20, 1986; Federal Register, volume 53, number 24, February 5, 19888; Federal Register, volume 54, number 100, May 25, 1989; Federal Register, volume 55, number 154, August 9, 1990.

Agency: Bureau of Land Management, Interior.

Action: Establishment of Written Orders for the management of public lands along the Merced River.

Summary: The Merced River was classified "wild" and "scenic" in accordance with the Wild and Scenic Rivers Act as amended (public law 95–625, November 10, 1978). These Written Orders shall insure management of the public lands consistent with these classifications. These Written Orders apply to public lands within one quarter mile of the river; from the National Forest boundary west to Lake McClure. This public land is within sections 1, 2, 4, 5, 6, 9, 10, 11 15, Township 4 south, Range 17 east; and sections 2, 3, 5, 6, 8, 9, 10, 11, 16, 17, 25, 35, 36, Township 3 south, Range 18 east; Mt. Diablo meridian.

Written Orders:

(a) No person shall discharge a firearm within one quarter mile of each side of the Merced River. A firearm is defined as under United States Code, Title 43, section 921(a)(3).

(b) No person shall occupy a campsite in a developed campground with more than two motor vehicles or more than eight adults.

(c) No person shall camp outside of designated campgrounds along the

Merced River within the area described as one quarter mile upriver from Briceburg to one quarter mile below Railroad Flat Campground and within one quarter mile of the north side of the Merced River. Camping is defined in Supplementary Rules for the South Yuba River.

(d) No person shall operate a motor vehicle on the old railroad bed between the high water mark of Lake McClure and the Railroad Campground; or between Briceburg and the National Forest boundary.

(e) (Briceburg is designated a Day Use Area only. No camping or other overnight activities will be allowed.) DELETE

(e) No person shall operate a motor vehicle on the Briceburg Road unless it is registered for street use as defined in the California Vehicle Code, section 4000a.

(f) No person shall operate a motor vehicle off the Briceburg Road or the developed campground roads.

(g) No person shall enter a developed campground between 10:00 PM and 6:00 AM unless that person is a registered camper or that person is visiting a registered camper.

(h) No person shall operate or possess a motor vehicle or motorized equipment in the classified "wild" section of the Merced River; which is described as the section between the high water mark of Lake McClure and the Railroad Flat Campground.

(i) No person shall possess any glass beverage container within one quarter mile of each side of the Merced River.

(j) No person shall occupy a campsite for longer than 30 minutes without placing the required camping fee in the envelopes provided for that purpose, providing the written information on the envelope, and depositing the envelope with the required fee into the fee collection receptacle.

(k) No person shall camp more than fourteen (14) days in any ninety (90) day period.

(l) No person shall leave any property unattended for more than twenty four (24) hours. Supplemental Information: The authority for this Written Order is contained in the Code of Federal Regulations, Title 43, section 9351.2–1. Any person who fails to comply with *these Written Orders* may be subject to a fine not to exceed 500 dollars and/or imprisonment not to exceed 6 months. These penalties are specified in the Code of Federal Regulations, Title 43, section 9351.2–1(f). The following persons are exempt from this Written Order: 1. Any Federal, state, local government officer or member of an organized rescue or fire suppression force in the performance of an official duty, 2. Persons with written permission authorizing the otherwise prohibited act or omission.

Public Comment

Written comments will be accepted and considered from the public, organizations, and other governmental agencies for a period of 45 days after the date of publication in the **Federal Register**, October 20, 2000. Written comments should be addressed to Deane Swickard, Field Manager, 63 Natoma Street, Folsom, CA 95630. Comments may also be sent by e-mail to Deane Swickard@ca.blm.gov.

Al Wright,

Acting State Director, California.

[FR Doc. 00–18383 Filed 9–1–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act and the Marine Protection, Research and Sanctuaries Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Chevron USA, Inc.*, Civil No. 99–12216–DT was lodged on August 23, 2000, with the United States District Court for Central District of California.

The consent decree settles claims for civil penalties and injunctive relief against Chevron for: (1) Civil penalties and injunctive relief pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), based on Chevron's violations of Rule 1142 of the South Coast Air Quality Management District Rules as incorporated into California's State Implementation Plan ("SIP"), and (2) injunctive relief pursuant to the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1401–1445, based on Chevron's unpermitted transportation of material for disposition into the ocean. Pursuant to the consent decree Chevron will pay a civil penalty of $6 million and perform two supplemental environmental projects valued at $1 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chevron USA, Inc.*, DOJ Ref. #90–5–2–1–06559.

The proposed consent decree may be examined at the office of the United States Attorney, for the Central District of California, 300 North Los Angeles Street, Room 7516, Los Angeles, California 90012; and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–22670 Filed 9–1–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, the Emergency Planning and Community Right to Know Act and the Comprehensive Environmental Response, Compensation and Liability Act of 1980

Consistent with the policy of 28 CFR 50.7, notice is hereby given that on July 20, 2000, a proposed Consent Decree ("Decree") in *United States* v. *Equilon Enterprises LLC*, Civil action No. 00–1301–MLB, was lodged with the United States District court for the District of Kansas.

The Complaint filed in the above-referenced matter alleges that Equilon Enterprises is liable for violations of Sections 113(b)(1) and 113(b)(2) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b)(1)(b)(2); Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") 42 U.S.C. 9603; and Section 325(b)(3) of the Emergency Planning and Community Right to Know Act "EPCRA"), 42 U.S.C. 11045(b)(3), that occurred at a petroleum refinery located in El Dorado, Kansas ("El Dorado Finery"). The Complaint, which was filed simultaneously with the Consent Decree on July 20, 2000, seeks penalties of up to $27,500 per day for each day Defendants violated the CAA, EPCRA and CERCLA. Under the proposed Consent Decree, Equilon will pay the United States a civil penalty of $600,000.

The Department of Justice will receive, for a period of thirty (3]) days form the ate of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, and should refer to *United States* v. *Equilon Enterprises LLC.* DOJ Ref. #90–5–2–1–06506/3.

The proposed Decree may be examined at the office of the United Stats Attorney, District of Kansas, 1200 Epic Center, 301 North Main Street, Wichita, Kansas 67202–4812 and the Region VII Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7714. A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy of the Consent Decree, please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–22672 Filed 9–1–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on August 28, 2000, a proposed Consent Decree in *United States* v. *MHC Operating Limited Partnership* and *United States* v. *MHC Financing Limited Partnership* (N.D. Indiana), Civil Action Nos. 200CV509 and 200CV510, was lodged with the United States District Court for the Northern District of Indiana.

This Consent Decree represents a settlement of claims brought against defendants ("Settling Defendants") in the above-referenced actions brought under Section 301 of the Clean Water Act, 33 U.S.C. 1311, for discharging effluent from two separate sewage treatment facilities without a valid permit or in violation of applicable permit limits. the Settling Defendants are MHC Operating Limited Partnership, Manufactured Home Communities, Inc., MHC Financing Limited Partnership, and MHC–QRS, Inc.

Under the proposed settlement, the Settling Defendants will be required to pay a civil penalty of $765,000 for past violations of the Clean Water Act. The proposed settlement also requires Manufactured Home Communities, Inc. and MHC Operating Limited Partnership to comply with the NPDES permit for its sewage treatment facility in Chesterton, Indiana. Because the sewage treatment facility operated by MHC–QRS, Inc. and MHC Financing Limited Partnership has connected to the City of Portage sewer system and no longer discharges pollutants directly to waters of the United States, the proposed settlement does not include similar requirements for that facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *MHC Operating Limited Partnership* and *United States* v. *MHC Financing Limited Partnership* (N.D. Indiana), D.J. Ref. 90–5–1–1–4496 and 90–5–1–1–4496A.

The Consent Decree may be examined at the Office of the United States Attorney, 1001 Main Street, Suite A, Dyer, Indiana 46311–1234, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–22671 Filed 9–1–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 204–2000]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to establish a new office-wide system of records for the Office of Special Counsel—Waco (OSCW) entitled "CaseLink Document Database for Office of Special Counsel—Waco," JUSTICE/OSCW–001.

This system will maintain all documents collected by the Office of Special Counsel (OSC) from third party sources, including documents produced by other federal agencies in response to requests from this office, as well as all the memoranda of interviews conducted by the OSC during its inquiry into government conduct relative to certain events occurring in Waco, Texas.

In accordance with 5 U.S.C. 552a (e) (4) and (11), the public is given a 30-day period to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by October 5, 2000. The public, OMB, and the Congress are invited to submit any comments to Thomas E. Wack, Office of Special Cousnel—Waco, 200 N. Broadway, 15th Floor, St. Louis, Missouri 63102.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to the OMB and the Congress.

Dated: August 28, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

OSCW–001

SYSTEM NAME:

CaseLink Document Database for Office of Special Counsel—Waco.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Special Council-Waco, 200 N. Broadway, 15th Floor, St. Louis, Missouri 63102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are referenced in documents collected or created by the Office of Special Counsel, relating to the investigation of the events occurring in Waco, Texas on April 19, 1993.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains documents produced by other federal agencies in response to requests from this office, court records (such as briefs, motions, transcripts from grand jury testimony, and orders), inter-agency and intra-agency correspondence, legal research, and other related documents. These documents include civil investigatory and/or criminal law enforcement information. Finally, the system includes memoranda of interviews (MOIs) conducted by the OSC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system was established and is maintained pursuant to 5 U.S.C. 301, 44 U.S.C. 3101 and 28 U.S.C. 509 and 510.

PURPOSE(S):

The purpose of this system is to maintain all documents collected by the Office of Special Counsel (OSC) as well as all the memoranda of interviews conducted by the OSC during its inquiry into government conduct relative to certain events occurring in Waco, Texas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in the system, including the memoranda of interviews (MOIs), may be disclosed from this system as follows:

(a) To other witnesses when necessary in order to obtain information to further the investigation of the OSC;

(b) To an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(c) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(d) In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(e) In a proceeding before a court or adjudicative body before which the Department of Justice is authorized to appear when (a) the Department of Justice, or any subdivision thereof, or (b) any employee of the Department of Justice in his or her official capacity, or (c) any employee of the Department of Justice in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Department of Justice determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Department of Justice to be arguably relevant to the litigation;

(f) To the news media and the public pursuant to 28 CFR 50.2 (Department of Justice regulations setting forth guidelines for disclosure of information to the media) unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(g) To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2096; and

(h) To contractors, student interns, or other employees of the OSC to the extent necessary to enable them to perform their assigned duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information on this system is stored on a dedicated network server in electronic form. Some material is recorded and stored on other data processing storage forms.

RETRIEVABILITY:

Records are retrieved by names or case numbers or other key word or search term.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable rules and policies, including the Department's automated systems security and access policies. All information on the system is password protected and requires access to the OSC's secure internal network. All records and technical equipment are maintained in a central office with restricted access. The facility is secured by the Federal Protective Service.

RETENTION AND DISPOSAL:

Records of the investigation shall be transferred to the National Archives at the conclusion of the Special Counsel's work. Administrative and support records shall be disposed of in accordance with General Records Schedules issued by the National Archives and Records Administration (NARA). Standard Form 115, Request for Records Disposition Authority, is pending NARA approval.

SYSTEM MANAGER(S) AND ADDRESS:

John J. Sardar, Assistant Special Counsel, 200 N. Broadway, 15th Floor, St. Louis, Missouri 63102.

NOTIFICATION PROCEDURE:

Address inquiries to System Manager named above.

RECORD ACCESS PROCEDURE:

Requests for access must be in writing and should be addressed to the System Manager named above. The envelope and letter should be clearly marked "Privacy Act Access Request." Include in the request the general subject matter of that document(s), and provide your full name and a certification of identity and a return address for response purposes. Some information may be exempt from access provisions as described in the section entitled "Systems Exempted from Certain Provisions of the Act." An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information may be exempt from contesting record procedures as described in the section entitled "Systems Exempted from Certain Provisions of the Act." An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCES CATEGORIES:

Sources of information contained in this system include but are not limited to documents produced by other federal agencies in response to requests from this office; investigative reports; other non-Department of Justice forensic reports; statements of individuals who may have information or knowledge surrounding the events occurring in Waco, Texas on April 19, 1993; verbatim transcripts of deposition and court proceedings including grand jury testimony; public reports; memoranda and reports from court and other agencies; and the work product of the Office of Special Counsel attorneys, investigators, and staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Privacy Act authorizes an agency to promulgate rules to exempt any system of records (or part of a system of records) from certain Privacy Act requirements if the system of records is maintained by an agency which performs as its principal function any activity pertaining to the enforcement of criminal laws (5 U.S.C. 552a(j)), or is investigatory material compiled for law enforcement purposes (5 U.S.C. 552a(k)).

The Attorney General has exempted this system from the following Privacy Act requirements: subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k).

[FR Doc. 00–22674 Filed 9–1–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; (Reinstatement, with change, of a previously approved collection for which approval has expired) National Survey of Prosecutors.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until November 6, 2000.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ellen Wesley, 202–616–3558, Office of Budget and Management Services, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) 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;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* National Survey of Prosecutors.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form numbers are NSP–5L and NSP–5S, Bureau of Justice Statistics, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 300 respondents will complete a 30 minute survey form NSP–5L, and 2100 respondents will complete a 20 minute survey form NSP–5S.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the survey is 850 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania, NW., Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: August 29, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–22581 Filed 9–1–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information Collection Under Review; National Crime Victimization Survey (NCVS).

The Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on April 18, 2000 (65 FR 20834), allowing for 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments until October 5, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202)514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Agency's/component's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(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 electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information

(1) *Type of information collection:* Extension and revision of a currently approved collection.

(2) *The title of the form/collection:* National Crime Victimization Survey (NCVS).

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* NCVS–1 and NCVS–2.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or Households. The National Crime Victimization Survey collects, analyzes, publishes, and disseminates statistics on the amount and type of crime committed against households and individuals in the United States. Respondents include persons age 12 or older living in about 49,200 interviewed households.

Other: None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 109,400 respondents at 1.95 hours per interview.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 70,958 hours annual burden.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Dated: August 30, 2000.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–22681 Filed 9–1–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the collection of the ETA 9048, Worker Profiling and Re-employment Services Activity, and the ETA 9049, Worker Profiling and Re-employment Services Outcomes. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 6, 2000.

Addressee

Diane Wood, Unemployment Insurance Service, 200 Constitution Ave. NW, Room S–4321, Washington, DC 20210; telephone 202–219–5340 x181; fax 202–219–8506 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The Worker Profiling and Re-employment Services (WPRS) program allows for the targeting of re-employment services to those most in need. The ETA 9048 and ETA 9049 are the only means of tracking the activities in the WPRS program. The ETA 9048 reports on the flows of claimants through the various stages of the WPRS system from initial profiling through to completion of various types of services allowing for evaluation and monitoring of the program. The ETA 9049 gives a limited, but inexpensive, look at the re-employment experience of profiled claimants who were referred to services by examining the State's existing wage record files to see in what quarter the referred individuals show up in employment, what wages they are earning and if they have changed industries.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

As the only continuous source of information on the WPRS program, the data is required to monitor and evaluate the WPRS program. There is a minor change to this reporting requirement to eliminate one data element.

Type of Review: Extension of a currently approved collection.

AGENCY: Employment and Training Administration.

Title: Worker Profiling and Re-employment Services Activity, and Worker Profiling and Re-employment Services Outcomes.

OMB Number: 1205–0353.

Agency Number: ETA 9048 and ETA 9049.

Affected Public: State Governments.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 424.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 106 hours.

Report	Total	Frequency	Total response	Average time per response (hour)	Average burden (hour)
ETA 9048	53	Quarterly	212	.25	53
ETA 9049	53	Quarterly	212	.25	53
Totals	106		424		106

Total Burden Cost (operating/maintaining): At approximately $25 per hour average State salary, the State burden is estimated at $2,650 per year. Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 29, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–22639 Filed 9–1–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice inviting proposals for Selected Demonstration Projects for Community Audits.

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The U.S. Department of Labor (Department or DOL), Employment and Training Administration (ETA), announces a demonstration program to support promising practices in strategic planning and "strategic research" related to "community audits." Community audits allow local stakeholders to bring together economic and labor market trend information which will support strategic planning and Workforce Investment Act (WIA) program implementation in their area, including customer service through the One-Stop Center system. Grantees will receive intensive technical assistance and participate in a rigorous evaluation. In addition, they will participate in and help structure national DOL activities meant to identify and disseminate lessons learned.

This solicitation describes the application submission requirements, the process that entities must use to apply for funds covered by this solicitation, how grantees are to be selected and the technical assistance that will be provided following selection of grantees. It is anticipated that $2.3 million will be available for funding projects covered by this solicitation. There will be two types of projects funded under the solicitation—locally-led projects and state-led multi-area projects. The maximum grant award will not exceed $50,000 for a single Local Workforce Investment Board (Local Board) or $100,000 for a regional consortium under the locally-led projects (approximately 15 grants), and will not exceed $150,000 for the State-led multi-area projects (approximately 10 grants awarded), for a period of 24 months from the date of execution.

Applicants should also look at the background materials on community audits, including "Conducting a Community Audit," which are available at the website *www.doleta.gov.*

DATES: The closing date for receipt of application is Friday, November 17, 2000. Applications must be received by 4:00 p.m. (Eastern Standard Time) at the address below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: *Denise Roach,* Reference: *SGA/DFA–110,* 200 Constitution Avenue, NW., Room S4203, Washington, DC 20210.

Hand Delivered Proposals. If proposals are hand delivered, they must be received at the designated address by 4:00 p.m., Eastern Standard Time on Friday, November 17, 2000. All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date and time. Telegraphed, e-mailed and/or fax proposals will not be honored. Failure to adhere to the above instructions will be a basis for determination of non-responsive.

Late Proposals. A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before the award is made and it:

- Was sent by U.S. Postal Service registered or certified mail not later than the fifth day (5th) calendar day before the closing date specified for receipt of applications (*e.g.* an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th):
- Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the deadline date specified for receipt of proposals in this SGA. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of an application received after the deadline date for the receipt of proposals sent by the U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper affixed by the U.S. Postal Service and on the original receipt from the U.S. Postal Service. The term "post marked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Denise Roach, Grants Management Specialist, Division of Federal Assistance at (202) 219–8739 (This is not a toll free-number). All inquiries should include the SGA/DFA–110 and a contact name, fax and phone number. This solicitation will also be published on the Internet,

on the Employment and Training Administration (ETA) Home Page at *http://www.doleta.gov.* Award notifications will also be published on the ETA Home Page.

SUPPLEMENTARY INFORMATION: This solicitation consists of 6 parts. Part I describes the authority, background, purpose and goals of the demonstration program and identifies demonstration policy. Part II describes the application process and provides guidelines for use in applying for demonstration grants. Part III includes the statement of work for the demonstration projects. Part IV describes the selection process including the criteria used to select grantees and the process of application and award. Part V describes the monitoring, reporting and evaluation activities that will be required of grantees. Part VI describes the assurances required of grantees. The Appendix includes application forms and a glossary.

Part I. Background

A. Authority

Section 171(d) of the Workforce Investment Act (WIA) of 1998 authorizes demonstration projects related to the employment and training needs of dislocated workers.

B. Background

A rapidly changing national and global economy has created significant restructuring of existing industries, growth of new economic sectors, and reorganization of work and work processes. This has led to dramatic changes in local economies. Local firms that once employed generations of families have disappeared, reduced employment, or radically changed skills demands. New firms have sprung up—seemingly overnight—offering job opportunities that the local education and training providers have not previously targeted. Career and job performance requirements have been redefined.

In many places, these changes have had the dual effect of leading to substantial numbers of worker layoffs *and* to reported shortages of workers skilled in certain demand occupations. Additionally, changing demographic patterns and new immigrants create both opportunities and challenges for linking jobs with job seekers.

The speed of transformation in local economies creates critical information gaps, making it more difficult for individuals to know what good job and career opportunities are available, for employers to find employees with the right sets of skills, and for service providers to plan and create appropriate workforce development interventions. Timely information on the supply and demand sides of the labor market and business trends is more critical than ever.

The WIA charges Local Boards with wide-ranging responsibility for workforce development within their communities and continues the emphasis on rapid response with an even greater emphasis on proactive interventions to anticipate and prevent the most harmful impacts of large layoffs. WIA also encourages Local Boards to think and act in terms of labor market areas and, as such, promotes regional cooperation among Local Boards.

To successfully meet these new challenges, Local Boards across the country are looking for ways to get the information they need to understand their labor markets and communities and to make informed, long-term strategic decisions. They also are reaching out to involve and/or develop partnerships with a broader group of stakeholders within their communities. In many regions, business, labor, and community leaders are the ones taking the lead in strategic research and planning initiatives for workforce development. Frequently, the problems and their solutions reach across Local Board boundaries, making regional cooperation and regional partnerships critical.

DOL has launched a series of initiatives to address these challenges of the "new economy". In 1998, Secretary of Labor Alexis M. Herman initiated a major Dislocated Worker Initiative to improve rapid response assistance and adjustment services for workers, businesses and communities. The Community Audit Project is one component of this broader initiative. Community audits are envisioned as a means by which key stakeholders in local workforce and economic development can better understand business and labor force trends, and develop more informed plans to respond to worker and business needs.

Other related new DOL initiatives are aimed directly at addressing the growing problem of skills shortages in local labor markets. One of these—the H–1B Technical Skill Training Grant Program—was created by the American Competitiveness and Workforce Improvement Act of 1998, signed by the President in October of 1998. That program is designed to help American workers—both employed and unemployed—acquire the requisite training in high skill, high demand occupations in areas such as information technology and health. In the first two rounds of competition for these grants, a total of $41.6 million has been awarded to local communities for skills training.

In addition, in June 1998, $7.5 million in Job Training Partnership Act (JTPA) Title III dislocated worker funds was awarded to train workers in skills related to the information technology industry. In June 1999, DOL awarded over $9.57 million to train dislocated workers in advanced manufacturing skills, and $11.2 million to upgrade the skills of workers employed in low-skill jobs or who have obsolete job skills (incumbent workers). In March 2000, twenty-three organizations received a total of $15.1 million to build regional skills consortia to address the skills shortage problem in their area. Also in June 2000, DOL awarded $11.2 million for a skill shortages, partnership training/system building demonstration program.

Finally, there is a joint venture of the U.S. Department of Labor and the fifty States called ALMIS (America's Labor Market Information System). Its mission is to support the emerging One-Stop Career Center system with useful labor market and occupational information. It also provides information directly to workers and employers, facilitating their access to jobs, labor, training, and career services information.

C. Purpose

The purpose of this demonstration is to support promising practices in strategic planning and "strategic research" that engage local stakeholders in taking a broad look at the needs of their community (or communities) and the character and direction of their regional economy. In the context of this SGA, we are identifying these practices as "community audits".

Community audits bring together information on economic and labor market trends to support both strategic planning and WIA program operations. They vary in scope and purpose, depending on their precise goals. However, all depend on a common base of information about the regional labor market—both its demand and its supply sides—and about the kinds of workforce development and other critical resources available (such as housing, child care, transportation, supportive services, and so on). A "community audit" is fundamentally a strategic planning effort that involves all the relevant stakeholders. Through community audits, leadership can assess what new skills may be in demand in growth sectors of the local economy and where a decline in

demand for certain skills may signal future layoffs.

Baseline data on the demand side of the labor market include a quantitative analysis of the structure and composition of the economy, an analysis of wages and skills associated with different jobs and industries, and a qualitative investigation of industry trends and of industry and firm employment and recruitment systems. Baseline data on the supply side of the labor market include a quantitative analysis of labor force structure and trends, identification of workers with barriers to success in the labor market, and a geographic mapping of workers in relationship to jobs. Finally, a basic mapping of the employment and training "resource base" identifies funding sources and providers for labor exchange, training, and support services.

Beyond this kind of "baseline" audit, local areas can use more focused and targeted techniques to answer particular questions and design specific strategies. The specific information needs will vary by community, depending upon the workforce development strategies being pursued, which may include the following (see attached Glossary for definition of the terms):

- Employing/re-employing a target population;
- Sectoral strategies;
- Layoff aversion strategies;
- Employer-focused training;
- "High Road" strategies;
- Community career ladders; and/or
- Development of skill standards.

DOL launched the Community Audit Project last winter to investigate promising practices in "strategic analysis" and to develop technical assistance tools Workforce Investment Boards and communities can employ to improve the quality and use of information at their disposal. This SGA is a component of the Community Audit Project seeking to further develop and expand the promising practices now being undertaken.

The specific goals for the community audit demonstration are:

1. To support States and local areas in their efforts to implement and use community audits as part of their overall strategic planning initiatives.

2. To increase the capacity of States and local areas to implement effective strategic planning efforts, utilizing the community audit as a tool.

3. To support projects that link Local Board efforts to those of other key stakeholders in a community.

4. To encourage regional partnerships within labor market areas or industry sectors.

5. To build a "peer learning network" to identify and share best practices.

6. To develop technical assistance materials and tools that states and local areas can use.

D. Demonstration Policy

1. Grant Awards

DOL anticipates awarding a total of $2.3 million in approximately 25 grants in two categories (local and State), with individual grant amounts varying depending on the type of grant awarded.

2. Types of Projects

Two types of projects will be funded under this SGA: projects that are initiated and led by local stakeholders and State-led multi-area projects. Either kind of project can involve a regional partnership, including an interstate partnership.

a. Locally-led projects

Community audits are focused on specific communities and/or regions. As such, local stakeholders initiate most of these efforts. However, these projects can have a variety of specific purposes, ranging from long-range broad-based strategic planning efforts to much more targeted initiatives. In addition, as suggested earlier, local applicants can take the form of a collaboration that crosses Local Board boundaries.

Eligible applicants: Eligible applicants for locally led projects include Local Boards or other consortia of local public and private stakeholders (including such groups as community-based organizations, unions, employers). All proposals must have the concurrence of the Local Board(s) for the areas involved in the proposed project.

Maximum amounts available: A maximum of $50,000 per grant for single Local Board areas and a maximum of $100,000 for regional consortia will be awarded, with a total of approximately $1,300,000 for this activity.

b. State-led Multi-Area Projects

States can play an important role in supporting the efforts of local areas and helping to build local capacity. One form this can take is by building a "learning network" among local areas that are actively engaged in community audit projects. States can also make use of economies of scale to develop information, tools, and other forms of technical assistance local areas can use.

Eligible applicants: Eligible applicants are State Workforce Investment Boards, State workforce development agencies, or other consortia of State public and private stakeholders in partnership with Local Boards or other consortia of local stakeholders in three or more local areas. All proposals must have the concurrence of the Local Boards and State Workforce Investment Boards in the areas involved in the proposed project.

Maximum amounts available: A maximum of $150,000 per grant will be awarded, with a total of approximately $1,000,000 for this activity.

3. Collaboration and Cost Sharing

Applicants must demonstrate collaboration among relevant stakeholders (such as employers, community organizations, labor unions, economic development organizations, and faith-based organizations). All applicants must also receive the concurrence of the relevant Local Board(s) and demonstrate a link between the proposed project and the strategic planning efforts of the Local Board(s). State level applicants must show evidence of consultation with Local Boards or local consortia. In addition, the applicants must show that they have reviewed the applicable Local or State Workforce Investment Plan(s) and have ascertained that the proposed project does not duplicate any other efforts.

Applicants must also demonstrate local commitment to the project. One concrete demonstration of that commitment is some form of cost sharing, that is other resources, either in-kind or funds, which are contributed to the project. However, this requirement is not intended to favor larger communities or those with more resources. DOL will take those factors into consideration in evaluating the strength of commitment.

4. Outside Technical Assistance

Once grants are awarded, DOL will arrange for a small team of experts with a range of expertise and experience. This expert team will be available to provide technical assistance to grantees. In addition, it will develop tools and products for use by grantees. Each grantee will be allotted 5 days of free technical assistance from this team. Additional hours can be purchased by grantees on a fee-for-service basis at a cost not to exceed DOL's consultant cost ceiling ($469 per day). In addition, grantees may utilize grant funds to contract with technical assistance providers of their choice.

5. Peer Learning Network

Once grants are awarded, grantees must participate in and make active contributions to a peer learning network of States and local areas funded through this solicitation. There will be at least two grantee meetings to facilitate the

development of this peer network. Total costs for these activities of approximately $4,000 should be anticipated in the proposal budget.

6. Period of Performance

The period of performance will be 24 months from the date of execution of the grant documents by the Government.

7. Option to Extend

DOL may elect to exercise its option to extend any or all of these grants for up to one additional year of operation, based on the availability of funds, successful project operation, and the needs of the Department.

Part II. Application Process and Guidelines

Proposal Submission: Applicants must submit four (4) copies of their proposal, with original signatures. The introductory paragraph of the application must state the type of grant for which the proposal is directed (1) Locally-led projects or (2) State-led multi-area projects. The proposal must consist of two (2) distinct parts, Part I and Part II. Part I of the proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix A) and Budget Form (Appendix B). The Catalog of Federal Domestic Assistance number is 17.246.

Applicants shall indicate on the SF 424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, section 18, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant or loan. The individual signing the SF 424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award.

The budget (Appendix B) shall include on separate pages a detailed breakout of each proposed budget line item found on the Budget Information Sheet, including detailed administrative costs. An explanation of how the budget costs were derived must be included. Part II must contain a technical proposal that demonstrates the applicant's capabilities in accordance with the Statement of Work contained in this document. The grant application is limited to 25 one-sided, double-spaced pages with 12 point font size on 8.5 x 11 inch paper with 1-inch margins which must include the following: I. Executive Summary—(1 page) II. Application narrative technical proposal. III. Time line implementation plan and the appendix. The 25 page limitation includes all attachments.

Part III. Statement of Work

A. Project Design

This section should detail the design of the proposed community audit project, including its purpose, geographic scope, the nature of the collaboration that will initiate it, its staffing structure, governance structure, level of community involvement, research and other methods, and time frame. The information below applies to both local and state applicants unless otherwise specified.

1. *Purpose:* Describe the specific purpose or purposes of the project.

2. *Geographic scope:* Describe the geographic scope of the project. The scope could be as narrow as a specific community within a local workforce investment area or as broad as a multi-local workforce investment area or group of regions that corresponds to a labor market or set of labor markets. State applications must include three or more Local Boards and justify the selection of Local Boards in terms of the coherence of a labor market region or a design meant to test the community audit process in different types of labor markets.

3. Economic scope: Describe what information is known now about the economy of the proposed region(s) (see Glossary) including critical industries, significant industrial clusters, and the general state of the economy. Also, provide information on the kinds of gaps in information on the regional economy that need to be pursued. (WIA local and State plans should be consulted, and information or gaps referenced, as appropriate.)

4. Collaboration: Describe in detail the character of the collaboration between the applicant and the other stakeholders involved in the community audit project. Include reference to consortium partners and other stakeholders, as appropriate. That description must include at least information addressing the following questions: Who is involved in the collaboration? What is the nature of their involvement? How was the collaboration initiated? Does it exist for the purpose of this project or for a broader purpose? What is its expected life span? Include a description of both the governing structure and staffing structure of the collaboration. State applications should describe the role of the State and/or State-level partners in relationship to local collaborations.

5. Coordination with other efforts: Describe other efforts within the community that have similar and/or complementary purposes and how this project will coordinate with those efforts. State applicants should describe State-level or regional efforts that may be coordinated with this project.

6. Community involvement: Describe who in the community will be involved in the project. That description should include information addressing the following questions: Does the project propose to engage members of the community beyond those involved in the initiating collaboration? If so, explain the purpose of this involvement; what members of the community will be targeted and why; and how their involvement will be elicited and sustained. Given that there are many barriers to successful engagement of stakeholders, describe methods the project will employ to overcome these barriers to participation. In particular, detail how the project will involve the employer community in a way that is both serious and sustained. State applications will need to describe the role of the State in supporting the community process.

7. Cost sharing: Describe what other resources will be contributed to the community audit project and by whom. These resources may include funds as well as in-kind contributions. Additionally, the description should include information on whether resources have been identified to continue these efforts past the completion of this particular project and/or if the partners will use this process to help identify such resources.

8. Strategic planning: Describe the planning process envisioned by the project. That description should at least address the following questions: How will the planning process be facilitated? How will the project ensure that the information gathered through the community audit is effectively utilized? Will the community audit be used to influence the existing or future WIA plans? Will it be used to influence other formal decision-making activities? How will the project ensure that this is not a one-shot effort?

9. Strategic research methods: Given the specific goals of the project, describe the methods the applicant will employ to gather the range and kinds of information needed to make the necessary strategic decisions.

10. Previous experience: Describe any previous experience the applicant(s) may have gathering and utilizing labor market information, surveying customers including the business community, conducting community audits, or other similar methods. If the applicant(s) has experience, describe

how funding from this project will advance previous efforts. If the applicant(s) does not have previous experience, describe the role it is hoped this project will play and how the community (or communities) intends to build on it in the future. In addition to this information, state applications will need to describe the state's previous role in supporting local areas in the gathering and use of labor market information, developing relationships with employers, and/or providing support for regional initiatives.

11. External technical assistance: Describe what kinds of external technical assistance would be most helpful to your proposed project. What components of this technical assistance do you expect to procure locally?

B. Planned Outcomes

Describe the planned outcomes of the community audit demonstration project. The project must provide DOL with a final report on its outcomes. These outcomes may include, but are not limited to:

1. *Community/regional audits:* We expect that one specific product of each of the projects will be the community audit itself. In some cases, this may be a detailed report or set of reports.

2. *Local/regional strategic plans:* Similarly, many projects may develop or revise specific local or regional strategic plans based on the work of the community audit.

3. *On-going local/regional/State collaborations:* One key purpose of the project is to forge tighter links and better cooperation among key stakeholders. These may take the form of on-going local or regional collaborations.

4. *Impact on operations:* Community audits may have an impact on specific operational activities such as State or local rapid response, business retention efforts, consumer reports, labor market information systems, and/or incumbent worker training.

5. *Increased expertise in strategic planning/strategic research:* Capacity-building is another goal of this demonstration. Projects should consider how to measure the gains in expertise in strategic planning and strategic research resulting from the project. This element is particularly important to address in the state applications

6. *Technical assistance tools and materials:* Projects may develop specific tools and materials that can support local areas in implementing community audits (for example, focus groups, surveys, data collection methods).

Part IV. Rating Criteria for Award and Selection Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed in the SGA. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award grants with or without discussions with the offeror's. In situations without discussions, an award will be based on the offerors signature on the Standard Form (SF) 424, which constitutes a binding offer. The Government reserves the right to make awards under this section of the solicitation to ensure geographical balance. The Grant Officer will make final award decisions based upon what is most advantageous to the Federal Government in terms of technical quality, responsiveness to this Solicitation (including goals of the Department to be accomplished by this solicitation) and other factors.

A. Collaboration/community involvement (23 points):

1. The collaboration on which the project is built is consistent with the goals of the project. (For example, the collaboration includes stakeholders within an entire labor market area, regardless of Local Board boundaries.)

2. The collaboration on which the project is built has strong ties to the employer community and Local Board(s).

3. The collaboration on which the project is built is broadly representative of the affected stakeholders. (In particular, the collaboration reaches beyond the traditional workforce investment community to involve other community actors such as economic development organizations, community development corporations (CDC's), community-based organizations (CBO's), employer organizations/ industry associations, labor organizations, faith-based organizations, neighborhood organizations, and so on).

4. The design and governance of the project ensure that all stakeholders have a real voice in the conduct of the community audit project and in the strategic decisions that flow from it.

The project design ensures that citizens of the affected community more broadly are involved in and have a voice in the conduct of the project.

B. Commitment (15 points)

1. The participating community (or communities) and state-level organization (where relevant) demonstrate a serious commitment to long-term strategic planning.

2. The participating community (or communities) and state-level organization (where relevant) demonstrate particular commitment to this project through their contribution of time and other resources.

3. The participating community (or communities) and state-level organization (where relevant) are able to explain how this project fits into other related efforts at the state and local level.

C. Goals and methods (22 points)

1. The goals of the project are consistent with the goals of the relevant Local Board(s).

2. The project is aimed at addressing an important workforce development (and economic development) concern or concerns in the target area by engaging local stakeholders in an effective strategic planning exercise.

3. The approaches and methods proposed by the project are consistent with the goals of the proposed project, that is:

(a) The geographic scope of the project is consistent with its goals.

(b) The project design sufficiently addresses the process, as well as the outcomes, of strategic planning and has allocated sufficient resources to ensure that the planning process is implemented effectively.

(c) The project design describes how the information gathered will be sufficiently detailed and wide-ranging, timely, and relevant to the project's strategic goals.

(d) The methods employed are such that the conduct of the community audit both involves and informs the community.

4. The project design addresses the process by which the results of the community audit will be used to influence policy and program outcomes.

D. Potential use and Value of Results (15 points)

1. The project process, structure and outcomes offer lessons, tools, or other products that will assist other communities throughout the country to understand and utilize information in creating workforce development initiatives.

2. The project design has the ability to broaden the role and responsibility of the Local Board(s) consistent with state and local plans including the strength and scope of partnerships.

3. Local partners indicate the value of this project to them in the strength of their contributions to the proposed project and its future after the grant period.

E. Sustainability (15 points)

1. The project builds local strategic planning and strategic research capacity (including on-going collaborations among key stakeholders).

2. The project develops methods, materials, and tools that can be used for future efforts and can be shared with other communities.

3. The Local Board(s) and elected officials (and/or State Workforce Investment Board or Governor) have a concrete commitment to sustain and broaden the practice of community audits.

F. Cost Effectiveness (10 points)

1. The application includes a detailed cost proposal including a detailed discussion of the expected cost effectiveness of the project. This is presented in terms of reasonableness of cost in relation to activities planned, including such factors as the geographic area covered by the project and the number and range of partners.

2. Expenses are identified which will be incurred in establishing and/or strengthening the collaborative, cooperative partnership. Benefits are described either qualitatively in terms of the value of established cooperative relationships and skills attained and/or quantitatively in terms of wage gains and cost savings resulting from collaborative efforts and activities.

3. The cost proposal provides information on the extent leveraged resources in funds and in kind (including staff time, printing, postage, meeting space) from stakeholders are available and how effectively they are used in the project.

Part V. Monitoring, Evaluation and Reporting

A. Monitoring

The Department is responsible for ensuring effective implementation of each competitive grant project in accordance with the WIA, applicable regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees. This review will focus on the project's performance in meeting the grant's program goals, complying with the requirements for the grant, expenditure of grant funds on allowable activities, collaboration with other organizations as required, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to additional reviews at the Department's discretion.

B. Reporting

DOL will arrange for or provide technical assistance to grantees to establish appropriate reporting and data collection methods and processes. An effort will be made to accommodate and provide assistance to grantees to enable them to complete all reporting electronically.

Applicants selected as grantees will be required to provide the following reports:

1. Monthly and Quarterly progress reports.

2. Standard Form 269, Financial Status Report Form, on a quarterly basis.

3. Final Project Report including an assessment of project performance. This report will be submitted in hard copy and on electronic disk utilizing a format and instructions to be provided by the Department.

C. Evaluation

DOL will arrange for an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make records available to evaluation personnel, as specified by the evaluator(s) under the direction of the Department.

Part VI. Assurances

Successful applicants must give several assurances, including that they will fully participate in post-award grantee meetings, agree to participate in a peer learning network and participate in DOL evaluations as necessary. All applicants must provide the full list of assurances as follows:

- Cooperate with DOL technical assistance providers, including on-site visits.
- Participate in the peer learning network.
- Participate in DOL evaluations.
- Assist the DOL in building staff capacity throughout the WIA system in this area.
- Participate in staff training activities planned by DOL/ETA.

Signed at Washington D.C., this date, August 30, 2000.

Laura A. Cesario,

Grant Officer, Division of Acquisition and Assistance.

Appendices

Appendix A: SF 424-Application for Federal Assistance
Appendix B: Budget Information Form
Appendix C: Glossary of Terms

BILLING CODE 4510–30–P

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

APPENDIX B

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$	$	$
2. Fringe Benefits (Rate%)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$	$	$

SECTION B - Cost Sharing/Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution	$		
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate%)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.

5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Costs: Add lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. Training /Stipend Cost: (If allowable)

11. Total Federal funds Requested: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C

GLOSSARY

For purposes of this solicitation, the following definitions apply:

Community Audit. A mechanism used by a community or region that collects "real-time data" from regional employers regarding actual and projected short term and longer term labor surpluses and needs, to enable the regional workforce development system (the entire community) to plan effectively for expected events-- both positive and negative--in order to improve the functioning of the market and minimize the overall negative impact on the community.

Consortium. A group of entities (agencies or organizations) representing key policy makers within a Region (as identified in the application, consistent with the definition herein) which has a common interest in developing strategies and processes for strategic planning and WIA program implementation within the Region. Applications submitted by consortia must either include the Local Board in the consortium or have the Local Board's concurrence.

Chief Elected Officials. Those elected officials whose responsibilities are defined in the Workforce Investment Act of 1998 (WIA).

Community career ladders. Community career ladder strategies attempt to identify cross-firm or cross-industry skill progressions and then link firms to facilitate the movement of workers from lower level jobs to higher ones.

Employer-focused training. Employer-focused training strategies (of either new hires or incumbent workers) view the firm as at least a co-equal customer (with the worker) and therefore tailor training to the needs of the firm.

Employing/re-employing a target population. Although WIA promises universal service, frequently WIBs also have reason to target specific sub-populations and devise strategies appropriate to their special needs. These could be dislocated hardware engineers from defense-dependent high technology firms, welfare recipients, or the working poor.

H-1B Visa Skill Shortages. Those skill shortages identified by the Immigration and Naturalization Service (INS) for which employers are permitted to apply to bring into the U.S. foreign workers to meet demands when the supply of workers with such skills in the local labor market are insufficient. A list of the occupations certified by the Department of Labor under the H-1B program for non-immigrant visas may be found at 64 Federal Register 44549-44550 (August 16, 1999).

"High Road" strategies. "High road" strategies are conscious efforts by local areas to target firms, occupations, and industries that will contribute most to the economic health of the region and offer workers decent wages and working conditions.

Incumbent Worker. An individual who is currently employed at small or medium-sized businesses (see definition) whose job skills do not meet the

current or future needs of the company if it is to remain competitive by keeping workers employed, averting layoffs, and upgrading workers' skills. As a result, the company has identified such workers as being at risk of being laid off in the future (5-year projection).

Independent Evaluation. A process and outcome evaluation conducted by a contractor hired by DOL. The evaluation will be designed to identify the lessons learned and the variety of effective models developed in order to maximize the value of systems tested and inform the workforce investment system.

Layoff aversion strategies. Historically, the employment and training system has placed more emphasis on responding to layoffs and closings than preventing them. However, increasingly states and local areas are placing layoff prevention high on their list of priorities. There are many kinds of layoff aversion strategies including: developing an effective early warning network; rapid response; sectoral strategies aimed at improving the competitiveness of an industry; retention strategies aimed a firms (including customized and incumbent worker training, business visitation programs, manufacturing modernization programs, etc.).

Local Workforce Investment Areas. Those geographic areas designated by the Governor of each State under section 116 of the Workforce Investment Act of 1998.

Local Workforce Investment Boards. Boards established under section 117 of the Workforce Investment Act of 1998.

Rapid Response. The initial information sharing activity (for employees and employers) to facilitate access to all public programs to assist individuals find new employment. Rapid response activities are authorized and funded under Title I of the Workforce Investment Act of 1998. The responsibility for rapid response rests with each State's Dislocated Worker Unit (DWU) which generally establishes a rapid response team.

Region. An area which exhibits a commonality of economic interest. Thus, a region may comprise several labor market areas, one large labor market, one labor market area joined together with several adjacent rural districts, special purpose districts, or a few contiguous local boards. If the region involves multiple economic or political jurisdictions, it is essential that they be contiguous to one another. A region may be either intrastate or interstate.

Regional Planning. A process described in WIA section 116(c).

Sectoral strategies. Sectoral strategies entail targeting a set of employers that share a set of common characteristics, such as a common market, common product, or basic resource needs (such as labor force, infrastructure, or technology). The idea of a sectoral intervention is to work with groups of firms to a) address a public policy concern and, at the same time, b) solve one or more common problems that the firms share. For example, a local area might

target the health care sector to a) employ hard-to-place former welfare recipients and, at the same time, b) solve a labor shortage problem for the industry.

Skills Shortage. Those specific vocational skills that employers have identified as lacking in sufficient numbers to meet their needs. A labor shortage occurs when the demand for workers possessing a particular skill is greater than the supply of workers who are qualified, available and willing to perform those skills. Problematic skills shortages occur when there is an imbalance between worker supply and demands for a significant amount of time for which the labor market does not, or is unable, adjust in a timely manner.

Skill standards. Skills standards can be used to create clearer career paths, as well as to provide firms with a more useful way of assessing applicants. The standards developed permit agreements among firms to recognize a credential or training program as meeting their hiring or promotional standards for workers in a particular occupation.

Small and Medium-sized Business. A business with 500 or fewer full-time employees.

[FR Doc. 00–22644 Filed 9–1–00; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

The U.S. National Commission on Libraries and Information Science (NCLIS) Sunshine Act Meeting

Friday, September 15, 2000—1:00–4:30 p.m.

The Madison Hotel, 15th and M Streets, NW, (Mt. Vernon Room), Washington, DC.

MATTERS TO BE DISCUSSED:

Administrative matters
Chairperson's report
Executive Director's report
Library Services and Technology Act (LSTA) Reauthorization
International Federation of Library Associations and Institutions (IFLA) 2001
NCLIS 30th anniversary celebration
NCLIS committees/programs/projects update
Commissioner activity report

To request further information or to make special arrangements for persons with disabilities, contact Barbara Whiteleather (telephone: 202–606–9200; fax: 202–606–9203; e-mail: bwhiteleather@nclis.gov) no later than one week in advance of the meeting.

Dated: August 24, 2000.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 00–22841 Filed 8–31–00; 3:49 pm]
BILLING CODE 7527–$$–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–206]

In the Matter of Southern California Edison Company; San Onofre Nuclear Generating Station, Unit 1

Exemption

I

Southern California Edison Company (SCE or the licensee) is the holder of Facility Operating License No. DPR–13, which authorizes the licensee to possess the San Onofre Nuclear Generating Station, Unit 1 (SONGS1). The license states, in part, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized-water reactor located at the licensee's site in San Diego County, California. The facility is permanently shut down and defueled, and the licensee is no longer authorized to operate or place fuel in the reactor.

II

It is stated in Title 10 of the U.S. Code of Federal Regulations (10 CFR) section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

By letter dated April 28, 2000, as supplemented by letter dated July 21, 2000, the licensee requested 12 exemptions from certain requirements of 10 CFR 73.55. These requirements are: (1) 10 CFR 73.55(a) the requirement that any emergency suspension of safeguards measures be approved by a licensed senior operator, (2) 10 CFR 73.55(c)(1)—the requirement that a protected area be maintained, (3) 10 CFR 73.55(c)(3)—the requirement that isolation zones be maintained in outdoor areas adjacent to the physical barrier at the perimeter of the protected area, (4) 10 CFR 73.55(c)(4)—the requirement that intrusion detection equipment for the perimeter of the protected area be utilized, (5) 10 CFR 73.55(c)(5)—the requirement that exterior illumination levels for the spent fuel building be maintained at the 0.2 footcandle level, (6) 10 CFR 73.55(c)(6)—the requirement that the control room be bullet resisting, (7) 10 CFR 73.55(c)(7)—the requirement that a vehicle barrier system be maintained around the spent fuel pool, (8) 10 CFR 73.55(d)(1)—the requirement that the last access control point be bullet resisting, (9) 10 CFR 73.55(e)(1)—the requirements that the central alarm station be located within the protected area, that there be a secondary alarm station, and that a secondary power supply system for the alarm annunciation equipment be within a vital area, (10) 10 CFR 73.55(e)(2)—the requirement for the alarm transmission lines to be tamper indicating and self-checking, (11) 10 CFR 73.55(h)(3)—the requirement to have five or more guards per shift immediately available to fulfill response commitments, and (12) 10 CFR 73.55(h)(6)—the requirement to remotely observe the isolation zone and physical barrier at the perimeter of the protected area. The proposed exemption is a preliminary step toward enabling SCE to revise the San Onofre Nuclear Generating Station Security Plan under 10 CFR 50.54(p) to develop and implement a defueled security plan to protect against radiological sabotage at SONGS1, a permanently shutdown reactor facility with fuel stored in the spent fuel storage pool.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55 the Commission is allowed to authorize a licensee to provide alternative measures for protection against radiological sabotage, provided the licensee demonstrates that the proposed measures meet the general performance requirements of the regulation and that the overall level of system performance provides protection against radiological sabotage equivalent to that provided by the regulation.

The underlying purpose of 10 CFR 73.55 is to provide reasonable assurance that adequate security measures can be taken in the event of an act of radiological sabotage. Because of its permanently shutdown and defueled condition, the number of target sets susceptible to sabotage attacks has been reduced. In addition, with more than 90 months of radiological and heat decay since SONGS1 was shut down in 1992, the radiological hazards associated with the remaining target sets, even if subject to sabotage attack, do not pose a significant threat to the public health and safety.

IV

For the foregoing reasons, the Commission has determined that the proposed alternative measures for protection against radiological sabotage meet the same assurance objective and the general performance requirements of 10 CFR 73.55 considering the permanently shutdown conditions at SONGS1 with all of the fuel in the spent fuel pool. In addition, the Commission has determined that the overall level of the proposed system's performance, as limited by this exemption, would not result in a reduction in the physical protection capabilities for the protection of special nuclear material or of SONGS1. Specifically, an exemption is being granted for 12 specific areas in

which the licensee is authorized to modify the existing security plan commitments commensurate with the security threats associated with a permanently shutdown and defueled site for Unit 1 as follows:

(1) 10 CFR 73.55(a)—the requirement that any emergency suspension of safeguards measures be approved by a licensed senior operator in accordance with 10 CFR 50.54(x) and 50.54(y) for Unit 1 and that authority assigned to a certified fuel handler, (2) 10 CFR 73.55(c)(1)—the requirement that a protected area be maintained, since there are no vital areas, (3) 10 CFR 73.55(c)(3)—the requirement that isolation zones be maintained, since there are no vital areas, (4) 10 CFR 73.55(c)(4)—the requirement that an exterior intrusion detection system be located around the spent fuel building of the new security area, (5) 10 CFR 73.55(c)(5)—the requirement that the exterior illumination levels surrounding the spent fuel building be maintained at 0.2 footcandle measured horizontally at ground level, (6) 10 CFR 73.55(c)(6)—the requirement that the control room walls, doors, ceiling, floor, and any windows in the walls and in the doors be bullet-resisting, (7) 10 CFR 73.55(c)(7)—the requirement that a vehicle barrier system be maintained around the spent fuel building, (8) 10 CFR 73.55(d)(1)—the requirement that the individual responsible for the last access control function must be isolated within a bullet-resisting structure to assure the ability to respond or to summon assistance, (9) 10 CFR 73.55(e)(1)—the requirement that a continuously manned central alarm station be located within the protected area, the requirement for a continuously manned secondary alarm station, and the need for a secondary power supply system for the alarm annunciation equipment to be located within a vital area, (10) 10 CFR 73.55(e)(2)—the requirement that alarm transmission lines be tamper indicating and self-checking, (11) 10 CFR 73.55(h)(3)—the requirement that at least five guards be immediately available for responding to threats, theft, and radiological sabotage associated with the spent fuel pool, and (12) 10 CFR 73.55(h)(6)—the requirement that assessment capability of the protected area and isolation zones be provided.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants SCE an exemption as described above from those requirements of 10 CFR 73.55 at SONGS1 in its permanently shutdown and defueled condition based on the safety evaluation enclosed with NRC letter to SCE dated August 29, 2000, which issues the exemption.

This exemption does not apply to SONGS Unit 2 or 3 or to the storage of any SONGS Unit 2 or 3 spent fuel in the SONGS Unit 1 spent fuel pool.

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant effect on the quality of the human environment (65 FR 42402, dated July 10, 2000).

This exemption is effective upon issuance.

Dated: Dated at Rockville, Maryland, this 29th day of August 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–22650 Filed 9–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

In the Matter of Southern Nuclear Operating Company, Inc.; (Hatch Units 1 and 2)

Exemption

I

The Southern Nuclear Operating Company, Inc. (the licensee) is the holder of Facility Operating License Nos. DPR–57 and NPF–5 which authorize operation of the Hatch, Units 1 and 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of boiling water reactors (Units 1 and 2) located on the licensee's Hatch site in Georgia. This exemption refers to both units.

II

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G states that "[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Code, Section XI, Appendix G limits.

To address provisions of amendments to the technical specifications (TS) P–T limits, the licensee requested in its submittal dated June 1, 2000, that the staff exempt Hatch, Units 1 and 2 from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G and substitute use of ASME Code Cases N–588 and N–640. In addition to the primary function in permitting the postulation of a circumferentially-oriented flaw (in lieu of an axially-oriented flaw) for the evaluation of the circumferential welds in RPV P–T limit curves, Code Case N–588 also provides a new set of equations for calculating stress intensity factors due to pressure and thermal gradient for axial flaws. Although the licensee did not use the primary function of Code Case N–588, it employed the new set of equations for calculating stress intensity factors for axial flaws. Since these equations usually give lower stress intensity factors, using Code Case N–588 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G, and therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits. Likewise, since the K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G, and therefore, an exemption to apply the Code Case would also be required by 10 CFR 50.60.

The proposed amendment will revise the P–T limits in the Technical Specifications for Hatch, Units 1 and 2 related to the heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) for a series of specified Effective Full Power Years (EFPYs) up to 54 EFPYs for both units.

Code Case N–588

The licensee has proposed an exemption to allow use of ASME Code Case N–588 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G to determine the P–T limits.

The proposed amendments to revise the P–T limits in the TSs for both units rely in part on the requested exemption. Since the limiting beltline materials for both units are plates, the proposed P–T limits did not use the primary function of Code Case N–588, *i.e.*, to postulate a circumferentially-oriented reference flaw as the limiting flaw in a RPV circumferential weld. However, the proposed P–T limits employed the new set of equations for calculating stress intensity factors for the postulated axial flaw.

Postulating the Appendix G reference flaw (an axially-oriented flaw) in a circumferential weld is physically unrealistic and overly conservative because the length of the flaw is 1.5 times the vessel thickness, which is much longer than the width of the reactor vessel girth weld. Industry experience with the repair of weld indications found during preservice inspection and data taken from destructive examination of actual vessel welds confirms that all detected flaws are small, laminar in nature, and do not transverse the weld bead orientation. Therefore, any potential defects introduced during the fabrication process and not detected during subsequent nondestructive examinations would only be expected to be oriented in the direction of weld fabrication. For circumferential welds this indicates a postulated defect with a circumferential orientation. The above mentioned reasons are the bases for the staff to approve previous applications of Code Case N–588 from other licensees to their P–T limits with the circumferential weld as the limiting beltline material. These approvals also permit the use of the improved set of equations for calculating stress intensity factors due to pressure and thermal gradient for axial flaws to establish P–T limits to protect the RCS pressure boundary from failure during hydrostatic testing, heatup, and cooldown when the limiting beltline material is not a circumferential weld.

Consistent with previous approvals for using Code Case N–588, the NRC staff concurs that relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N–588 is acceptable and would maintain, pursuant to 10 CFR50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

Code Case N–640 (formerly Code Case N–626)

The licensee has proposed an exemption to allow use of ASME Code Case N–640 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G to determine P–T limits.

The proposed amendment to revise the P–T limits for Hatch, Units 1 and 2 rely in part on the requested exemption. These revised P–T limits have been developed using the K_{Ic} fracture toughness curve, in lieu of the K_{Ia} fracture toughness curve, as the lower bound for fracture toughness.

Use of the K_{Ic} curve in determining the lower bound fracture toughness in the development of P–T operating limits is more technically correct than the K_{Ia} curve since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{Ic} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the initial conservatism of the K_{Ia} curve since 1974 when the curve was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves based on the K_{Ic} curve will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations.

Consistent with previous approvals for using Code Case N–640, the NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that exemptions would be required to approve the use of Code Cases N–588 and N–640. The staff examined the licensee's rationale to support the exemption requests and concurred that the use of the code cases would meet the underlying intent of these regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR Part 50, Appendix G; Appendix G of the Code; and RG 1.99, Revision 2 the staff concluded that application of the code cases as described would provide an adequate margin of safety against brittle failure of the RPV and that application of the specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G is not necessary to achieve the underlying purpose of the rule. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Cases N–588 and N–640 may be used to revise the P–T limits for Hatch, Units 1 and 2.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Southern Nuclear Operating Company, Inc. an exemption from the requirements of 10 CFR Part 50, Section 50.60(a) and 10 CFR Part 50, Appendix G, for Hatch, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (65 FR 52140).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of August 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–22648 Filed 9–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop Concerning The Revision of the Oversight Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Public Workshop.

SUMMARY: NRC will hold a public workshop at the NRC Headquarters location at 11555 Rockville Pike, in Rockville, MD to provide the public, those regulated by the NRC, and other stakeholders, with information about and an opportunity to provide views on how NRC plans to revise its oversight program for nuclear fuel cycle facilities. This workshop follows the public workshop held on May 24–25, 2000. Presentations and other documents provided at each workshop are placed on the NRC INTERNET web page (http://www.nrc.gov).

Similar to the revision of the oversight program for commercial nuclear power reactor plants, NRC initiated an effort to improve its oversight program for nuclear fuel cycle facilities. This is described in SECY–99–188 titled, "Evaluation and Proposed Revision of the Nuclear Fuel Cycle Facility Safety Inspection Program." SECY–99–188 is available in the Public Document Room and on the NRC Web Page at http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html.

Purpose of Workshop: To obtain stakeholder views for improving the NRC oversight program for ensuring regulatees (licensee and certificate holders) maintain protection of worker and public health and safety, protection of the environment, and safeguards for special nuclear material and classified matter in the interest of national security. The oversight program applies to commercial nuclear fuel cycle facilities regulated under 10 CFR Parts 40, 70, and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities, low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF_6) production facility. These facilities possess large quantities of materials that are potentially hazardous (*i.e.*, radioactive, toxic, and/or flammable) to the workers, public, and environment. Also, some of the facilities possess information and material important to national security. In revising the oversight program, the goal is to have an oversight program that: (1) Provides earlier and more objective indications of acceptable and changing safety and national security related performance, (2) increases stakeholder confidence in the NRC, and (3) increases regulatory effectiveness, efficiency, and realism. In this regard, the NRC desires the revised oversight program to be more risk-informed and performance-based and more focused on significant risks and poorer performers.

The public workshop will focus on:

- Status of the evolving revision of the oversight program.
- Safety and national security related problem identification, resolution, and correction.
- Revision of the NRC inspection program.
- Revision of the NRC overall performance assessment process.
- Communication plans for informing stakeholders about the oversight program revision.
- Next actions/schedule to complete revision of the oversight program

DATES: Members of the public, industry, and other stakeholders are invited to attend and participate in the workshop, which is scheduled for 8:30 a.m. to 4:30 p.m. on Wednesday, September 13, 2000. The workshop will be held in the NRC Professional Development Center in room T3B43.

ADDRESSES: NRC Headquarters, 11555 Rockville Pike, in Rockville, MD. Visitor parking around NRC Headquarters is limited; however, the public meeting site may be reached by taking the Washington DC area metro to White Flint. NRC Headquarters is located across the street from the White Flint metro station.

FOR FURTHER INFORMATION, CONTACT: Walter Schwink, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7190, e-mail *wss@nrc.gov*.

Dated at Rockville, Maryland this 29th day of August 2000.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Safety and Safeguards Support Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–22649 Filed 9–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 121st meeting on September 19–20, 2000 at the Crowne Plaza Hotel, Ballroom C, 4255 South Paradise Road, Las Vegas, Nevada.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, September 19, 2000

A. *8:00 a.m.–9:00 a.m.: ACNW Planning and Procedures* (Open)—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The ACNW will discuss planned tours and ACNW-related activities of individual members.

B. *9:00 a.m.–4:15 p.m.: Yucca Mountain Review Plan (YMRP) Working Group Session* (Open)—The NRC staff will present their current draft of the YMRP and discuss the principal points in each chapter of the document.

C. *4:15 p.m.–7:15 p.m.: Public Comments* (Open)—The Committee will hear comments from stakeholders. Among those groups that have indicated their intent to provide brief comments: the State of Nevada, counties, native American tribes, and the Nevada Nuclear Waste Task Force. Other comments from parties in attendance will be accepted as time permits.

Wednesday, September 20, 2000

D. *8:00 a.m.–8:30 a.m.: DOE's Progress on Proposed Repository at Yucca Mountain, Nevada* (Open)—Representatives of the Department of Energy (DOE) will brief the Committee on recent progress at Yucca Mountain.

E. *8:30 a.m.–9:15 a.m.: DOE's Site Recommendation Considerations Report (SRCR)* (Open)—Representatives of the DOE will update the Committee on the status of the SRCR.

F. *9:15 a.m.–12:00 Noon: Total System Performance Assessment—Site Recommendations (TSPA–SR)* (Open)—DOE representatives will provide an update and discuss major aspects of the TSPA–SR.

G. *1:00 p.m.–2:00 p.m.: Chlorine*[36] Issue (Open)—DOE representatives will provide an update as to their most recent findings on this issue.

H. *2:00 p.m.–3:15 p.m.: Fluid Inclusion Issues* (Open)—A panel comprised of DOE, State of Nevada and UNLV experts will discuss the results of their most recent studies on this issue.

I. *3:30 p.m.–4:30 p.m.: Site Status—Tour* (Open)—A DOE representative will provide the ACNW with a preview of the relevant activities and tour stops scheduled for the September 21st visit by the Committee of the proposed repository at Yucca Mountain.

J. *4:30 p.m.–6:00 p.m.: Prepare for the October Public Meeting with the*

Commission (Open)—The ACNW will finalize preparations for the next public meeting with the Commission. The meeting is tentatively scheduled for October 17, 2000. Potential topics for discussion include: the development of a Yucca Mountain Review Plan and 10 CFR Part 63 (Disposal of High-Level Radioactive Waste in a proposed geologic repository at Yucca Mountain, Nevada); highlights of the Committee's recent European trip, Risk Informed Regulation in the Office of Nuclear Material Safety and Safeguards; and comments on the staff's Yucca Mountain Site Sufficiency Strategy.

K. *6:00 p.m.–7:00 p.m.: Continue Preparation of ACNW Reports* (Open)—The Committee will discuss the planned ACNW report on the YMRP as well as potential future reports.

L. *7:00 p.m.–7:30 p.m.: Miscellaneous* (Open)—The Committee will discuss miscellaneous matters related to the conduct of the Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Howard J. Larson, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: August 29, 2000.

Annette Vietti-Cook,

Acting Advisory Committee Management Officer.

[FR Doc. 00–22645 Filed 9–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on September 21, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, September 21, 2000—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the status of activities associated with the Pressurized Thermal Shock (PTS) Technical Basis Reevaluation Project. These activities include determining a flaw distribution, embrittlement correlation, and fracture toughness. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: August 28, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–22646 Filed 9–1–00; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Privacy Act of 1974; Systems of Records

AGENCY: Peace Corps.

ACTION: Notice of Modifications to Existing Systems of Records and the Establishment of New Systems of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Peace Corps is issuing public notice of its proposal to modify nineteen systems of records and add six new systems of records. This notice provides information required under the Privacy Act on the revised and new systems of records.

DATES: Comments must be received by October 20, 2000. The proposed modified and new systems of records will be effective October 23, 2000 unless the Peace Corps receives comments that require a different determination.

ADDRESSES: Written comments should be addressed to Maggie Thielen, Office of the Chief Information Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Comments may also be submitted electronically to the following electronic mail address: *mthielen@peacecorps.gov*. Written comments should refer to Privacy Act Systems of Records Notices and, if sent

electronically, should contain this reference on the subject line.

FOR FURTHER INFORMATION CONTACT: Maggie Thielen, Office of the Chief Information Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Telephone: (202) 692–1106.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on routine uses of information in each system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review modifications to an agency's systems of records. The public, OMB, and Congress are invited to comment on the modifications to nineteen systems and the addition of six new systems.

The Peace Corps has updated and modified the following system of records: PC–1, PC–2, PC–3, PC–4, PC–5, PC–6, PC–7, PC–8, PC–9, PC–10, PC–11, PC–12, PC–13, PC–14, PC–15, PC–16, PC–17, PC–18, and PC–19. The agency has added six new systems of records: PC–20, Building Management, Parking, and Metro Pool; PC–21, Crisis Corps Database; PC–22, Volunteer Health Record; PC–23, Health Benefits Program for Peace Corps Volunteers; PC–24, Privacy and Freedom of Information Act Requests; and PC–25, Administrative Separations. The modifications and additions result from changes in agency programs over time.

I. Alphabetical List of System Notices

Accounts Receivable (Collection of Debts Claims Records)—PC–1—Modified System
Administrative Grievance Records—PC–14—Modified System
Building Management, Parking, and Metro Pool—PC–20—New System
Congressional Files—PC–2—Modified System
Contractors and Consultants Files—PC–3—Modified System
Crisis Corps Databas—PC–21—New System
Discrimination Complaint Files—PC–4—Modified System
Early Termination and Special Action—PC–25—New System
Employee Occupational Injury and Illness Reports—PC–5—Modified System
Employee Pay and Leave Records—PC–6—Modified System
Former Peace Corps Volunteers and Staff Database—PC–18—Modified System
Health Benefits Program for Peace Corps Volunteers—PC–23—New System
Legal Files—Staff, Volunteers and Applicants—PC–8—Modified System
Office of Inspector General Investigative Records—PC–19—Modified System
Office of Private Sector Cooperation and International Volunteerism Database—PC–10—Modified System
Overseas Executive Selection and Support—PC–15—Modified System
Payment Records: Transportation, Travel Authorizations, and Household Storage—PC–9—Modified System
Peace Corps Volunteer Database Management System—PC–17—Modified System
Peace Corps Volunteers: Reasons for Resignation—PC–7—Modified System
Personal Services Contracts—PC–11—Modified System
Personal Security Records—PC–13—Modified System
Privacy and Freedom of Information Act Requests—PC–24—New System
Property Records—PC–12—Modified System
Travel Files—PC–16—Modified System
Volunteer Health Record—PC–22—Modified System

II. General Routine Uses Applicable to More Than One System of Records

A. *Disclosure for Law Enforcement Purposes.* Information may be disclosed to the appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information indicates a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. *Disclosure Incident to Requesting Information.* Information may be disclosed 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, or to identify the type of information requested); when necessary to obtain information relevant to a Peace Corps decision concerning retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit.

C. *Disclosure to Requesting Agency.* Information may be disclosed to a Federal, State, local, or other public authority of the fact that this system of records contains information relevant to the requesting agency's retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for part or all of the record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. *Disclosure to Office of Management and Budget.* Information may be disclosed 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.

E. *Disclosure to Congressional Offices.* Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. *Disclosure to Department of Justice.* Information may be disclosed for purposes of litigation, provided that in each case the disclosure is compatible with the purpose for which the records were collected. Disclosure for these purposes may be made to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Peace Corps is authorized to appear. This disclosure may be made when:

1. The Peace Corps, or any component thereof;

2. Any employee of the Peace Corps in his or her official capacity;

3. Any employee of the Peace Corps in his or her individual capacity where the Department of Justice or the Peace Corps has agreed to represent the employee; or

4. The United States (when the Peace Corps determines that litigation is likely to affect the Peace Corps 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 Peace Corps is deemed by the Peace Corps to be relevant and necessary to the litigation.

G. *Disclosure to the National Archives.* Information may be disclosed to the National Archives and Records Administrative in records management inspections.

H. *Disclosure to Contractors, Grantees, and Others.* Information may be disclosed to contractors, grantees. consultants, or Volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Peace Corps and who have a need to have access to the information in the performance of their duties or activities for the Peace Corps. When appropriate, recipients will be required to comply with the

requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. *Disclosures for Administrative Claims, Complaints, and Appeals.* Information may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. *Disclosure to the Office of Personnel Management.* Information may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. *Disclosure in Connection with Litigation.* Information may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Peace Corps, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under Section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

L. *Disclosure to U.S. Ambassadors.* Information from this system of records may be disclosed to a U.S. Ambassador or his or her designee in a country where the Peace Corps serves when the information is needed to perform an official responsibility, to allow the Ambassador to knowledgeably respond to official inquiries and deal with in-country situations that are within the scope of the Ambassador's responsibility.

III. System Notices

PC–1

SYSTEM NAME:

Accounts Receivable (Collection of Debts Claims Records).

SYSTEM LOCATION:

Fiscal Services Division, Office of Financial Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any former or current Peace Corps employee, Volunteer, or other individual erroneously overpaid by the Peace Corps or who has an advance outstanding from the Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of individuals indebted to Peace Corps including the date of the debt, claim number, amount of the debt, related correspondence, and a copies of checks and the date the debt was paid if payment has occurred,

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

31 U.S.C. 3711 et seq.; Pub. L. 104–134; and the Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSES:

To record information and resolution of erroneous payments and outstanding advances made by the Peace Corps (Last revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, I, K, and L apply to this system.

RECORDS MAY ALSO BE DISCLOSED TO:

1. The Department of Justice in cases of administrative error involving overpayment or outstanding advances or situations in which the Peace Corps has been unable to collect a debt; or

2. The Department of Treasury for debt collection.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name or claim number.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are kept until settlement of a claim and then retired to the Federal Records Center to be destroyed in accordance with General Records Schedule 6.1.2.

SYSTEM MANAGERS AND ADDRESS:

Director, Fiscal Services Division, Office of Financial Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Peace Corps offices making payments or travel advances.

PC–2

SYSTEM NAME:

Congressional Files.

SYSTEM LOCATION:

Congressional Relations, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress and Peace Corps Volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bio-data and voting records of Members of Congress, incoming and outgoing correspondence with Members of Congress; and records regarding concerns of Members of Congress affecting the Peace Corps.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To track communications with members of Congress and congressional concerns affecting the Peace Corps (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, E, F, G, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name, congressional committee, Congress member, or state.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are kept on-site for five years, then retired to the Federal Center to be stored for ten years and then destroyed.

SYSTEM MANAGERS AND ADDRESS:

Director, Congressional Relations, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject, Peace Corps staff, and publications such as the Congressional Record, periodicals, and standard reference publications.

PC–3

SYSTEM NAME:

Contractors and Consultants Files.

SYSTEM LOCATION:

Center for Field Assistance and Applied Research, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Contractors or consultants for Peace Corps programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, resumes, and other materials pertaining to personal services contractors or consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To identify and track personal services contractor or consultants for Peace Corps program needs (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, J, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name, address, telephone number, social security number, salary history, skill categories, performance evaluations, and country to which work pertains.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are kept on-site for four years after becoming inactive and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Resource Development Division, Center for Field Assistance and Applied Research, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(5), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. The Peace Corps may, in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR Part 308.

RECORD SOURCE CATEGORIES:

Record subject and persons consulted as references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

PURSUANT TO 5 U.S.C. 552A(K)(5), THIS SYSTEM IS EXEMPT FROM THE FOLLOWING PROVISIONS OF THE PRIVACY ACT OF 1974, SUBJECT TO THE LIMITATIONS SET FORTH IN THAT SUBSECTION:

U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

PC–4

SYSTEM NAME:

Discrimination Complaint Files.

SYSTEM LOCATION:

American Diversity Program, Peace Corps, 1111 20th St., NW, Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee, volunteer, or applicant for employment or Volunteer service who has filed a complaint of discrimination against the Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints, copies of personnel records, investigatory materials and affidavits, correspondence related to complaints, and information as to how the complaint was resolved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

22 U.S.C. 2504(a); 42 U.S.C. 2000e–16; 42 U.S.C. 5057; 29 U.S.C. 206; 29 U.S.C. 633a; 29 U.S.C. 791; 29 U.S.C. 794a; E.O. 11478, and 29 CFR 300 and 1614.

PURPOSE(S):

To record actions taken on complaints of discrimination against the Peace Corps (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, I, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By employee name and case number.

SAFEGUARDS:

Paper records are maintained in lockable file cabinets. Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are kept until settlement of a claim and then retired to the Federal Records Center to be destroyed in accordance with General Records Schedule 6.1.2. Records are destroyed four years after the close of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, American Diversity Program, Peace Corps, 1111 20th St., NW, Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(2) and (5), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. The Peace Corps may, in its discretion, fully grant individual requests for access and correction if it determines that exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR Part 308.

RECORD SOURCE CATEGORIES:

Record subject, Peace Corps staff and Volunteers, and others with information relevant to resolving discrimination complaint.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

PURSUANT TO 5 U.S.C. 552A(K)(2) AND (5), THIS SYSTEM IS EXEMPT FROM THE FOLLOWING PROVISIONS OF THE PRIVACY ACT OF 1974, SUBJECT TO THE LIMITATIONS SET FORTH IN THOSE SUBSECTIONS:

5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

PC–5

SYSTEM NAME:

Employee and Volunteer Occupational Injury and Illness Reports.

SYSTEM LOCATION:

Office of Medical Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526; in Peace Corps offices in eleven U.S. cities; and in countries with Peace Corps programs while the record subject is serving as a volunteer there.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Peace Corps employees who have job-related injuries or illnesses; and Volunteers who have service-related injuries or illnesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, date of birth, social security number, FECA, case file number, sex, dates of service, country in which served, reports of occupational injuries and illnesses and associated medical reports including x-rays.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

29 U.S.C. 668; 5 U.S.C. 8101 et seq.; and the Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To record information and resulting actions pertaining to employee and Volunteer occupational injuries and illnesses (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, I, J, K, and L apply to this system.

RECORDS MAY ALSO BE DISCLOSED TO:

1. The record subject upon the subject's request;

2. The Occupational Safety and Health Administration, Department of Labor, for employment- or service-related injuries or illnesses; or

3. The Office of Workers' Compensation Programs, Department of Labor, for workers' compensation claims.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name, social security number, FECA case file number, and country of service.

SAFEGUARDS:

Paper records are maintained in a lockable file room. Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Workers' compensation records are retained on-site until inactive, then retired to the Federal Records Center for 15 years, after which they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Medical Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526; Director, Peace Corps regional offices; and Country Director in countries with Peace Corps programs.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(5), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. The Peace Corps may, in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject, Peace Corps supervisors, physicians and other health care providers, other medical sources including laboratories, and debt collection agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in that subsection: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

PC–6

SYSTEM NAME:

Employee Pay and Leave Records.

SYSTEM LOCATION:

Office of Human Resource Management, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Peace Corps employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel actions, savings bond applications, allotment advices, IRS tax levels, notice of deduction for health insurance, Combined Federal Campaign contributions, union dues withholdings applications, educational allowances for children of overseas employees, records concerning collections for overpayments, and time and attendance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

5 U.S.C. 5525 et seq.; 5 U.S.C. 5501 et seq.; 5 U.S.C. 5701; 5 U.S.C. 6301 et seq.; and 31 U.S.C. 3512.

PURPOSE(S):

To record moneys paid, allotments authorized, leave earned and used, and retirement benefits earned (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USER:

General routine uses A, B, C, D, E, F, G, H, I, J, K, and L apply to this system.

RECORDS MAY ALSO BE DISCLOSED TO:

1. The Treasury Department for the purpose of payroll, savings bonds or other deductions, or effecting administrative offset against the debtor to recoup a delinquent debt to the U.S. Government by the debtor;

2. To the Internal Revenue Service for tax matters;

3. To participating insurance companies holding policies with respect to Peace Corps employees; or

4. To a Federal agency to perform payroll services for the Peace Corps.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name and social security number (computer data base only).

SAFEGUARDS:

Paper records are maintained in lockable file cabinets. Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Paper records are maintained for three years after an employee terminates employment with the Peace Corps and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resource Management, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject.

PC–7

SYSTEM NAME:

Peace Corps Volunteers: Reasons for Resignation.

SYSTEM LOCATION:

Office of Planning, Policy, and Analysis, Peace Corps, 1111 20th St., NW, Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Peace Corps volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, codes reflecting the reasons for resignation as identified by the volunteer and Country Staff, training class, country of service, projected close of service date, and actual close of service date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To provide feedback from Peace Corps volunteers for improving agency programs and services. To provide a basis for assessing the record subject's suitability for Peace Corps staff employment, employment as a personal services contractor, or volunteer service. (Last revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses E, F, H, and K apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name or identifying number.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Paper records are maintained until data is entered into the computer system; electronic records are maintained for the life of the agency.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Planning, Policy, and Analysis, Peace Corps, 1111 20th St., NW, Washington, DC 20526.

NOTIFICATION, ACCESS AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedure are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject.

PC–8

SYSTEM NAME: LEGAL FILES—STAFF, VOLUNTEERS, AND APPLICANTS. SYSTEM LOCATION:

Office of the General Counsel, Peace Corps, 1111 20th St., NW, Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Peace Corps staff, volunteers, and applicants for employment or volunteer service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to employee administrative and EEO grievances, wage garnishments, appeals from adverse actions, claims by and against staff members, claims by and against volunteers, litigation involving Peace Corps staff or volunteers, and legal queries from staff members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To support legal representation of the Peace Corps and to provide legal counsel to the Director of the Peace Corps, the Director's designees, and Peace Corps staff (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, I, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Paper records are maintained in lockable file cabinets. Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Files are retired to the Federal Records Center consistent with the Peace Corps Records management Handbook where they are maintained for 30 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING, RECORD PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a (k) (1), (2), and (5), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject, and correspondence and reports from persons and agencies dealing with the Peace Corps.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a (k) (1), (2), and (5), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

PC-9

SYSTEM NAME:

Payment Records: Transportation, Travel Authorizations, and Household Storage.

SYSTEM LOCATION:

Fiscal Services Division, Office of Financial Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any current or former Peace Corps employee, volunteer or other individual traveling for Peace Corps and paid through contract, purchase order, or travel order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Invoices received, amount paid, payment vouchers and associated documents, schedule number, contract or purchase order number, type of payment (advance, partial, or final), travel authorizations, travel vouchers, receipts, and other materials related to official travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

5 U.S.C. 5701 et seq.; 31 U.S.C. 3512; 31 U.S.C. 3901 et seq.; and the Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSES

To record payments made as a result of purchase orders, travel authorizations, or other authorization documents (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, C, D, E, F, G, H, I, K, and L apply to this system.

RECORDS MAY ALSO BE DISCLOSED TO:

1. The Department of Treasury for disbursement to vendors and travelers; or

2. To a household storage vendor in the event of a discrepancy between the vendor's and Peace Corps' records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By employee name or schedule number.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are kept until settlement of a claim and then retired to the Federal Records Center to be destroyed in accordance with General Records Schedule 6.1.2.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Fiscal Services Division, Office of Financial Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject and Peace Corps authorizing offices.

PC–10

SYSTEM NAME:

Office of Private Sector Cooperation and International Volunteerism Database.

SYSTEM LOCATION:

Office of Private Sector Cooperation and International Volunteerism, Peace Corps, Office of Private Sector Development, 1111 20th St., N.W., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals making donations to Peace Corps partnership projects or inquiring about partnership projects; volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

For donors: name, address, telephone number, birth date, and contribution amount; for volunteers: name, address, and close of service date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

The Peace Corps Act, 22 U.S.C. 2501 et. seq.

PURPOSE(S):

To record and track donors and donations to the Peace Corps partnership projects (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, D, E, F, G, H, I, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

On paper and in a computerized database.

RETRIEVABILITY:

By name or project number.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are kept until three years after completion of project, and then retired to the Federal Records Center to be maintained and destroyed in accordance with General Records Schedule 6.1.2.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Private Sector Cooperation and International Volunteerism, Peace Corps, Office of Private Sector Development, 1111 20th St., NW, Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject and Peace Corps volunteers.

PC–11

SYSTEM NAME:

Personal Services Contracts.

SYSTEM LOCATION:

Office of Contracts, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personal services contractors for the Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

History of service or performance, including earning records of individuals hired as personal services contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: INCLUDES ANY REVISIONS OR AMENDMENTS):

The Peace Corps Act, 22 U.S.C. 2501 et seq.; and Federal Acquisition Regulations, 48 CFR Chapters 1–99.

PURPOSE(S):

For determining personal services contractor's eligibility for employment and pay determinations; for determining accountability and liability of parties under the personal services contract, and other contract issues (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name or contract number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets in a secure room. Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records in the system are maintained on site for one year after the closing date of the contract, then sent to the Federal Records Center where they are maintained for three years if the contract amount is $25,000 or less, and for six years and three months if the contract amount is greater than $25,000, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Contracts, 1111 20th St., N.W., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(5), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. However, the Peace Corps may, in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject, Peace Corps staff, and outside sources used as references for those applying as contractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

PURSUANT TO 5 U.S.C. 552A(K)(5), THIS SYSTEM IS EXEMPT FROM THE FOLLOWING PROVISIONS OF THE PRIVACY ACT OF 1974, SUBJECT TO THE LIMITATIONS SET FORTH IN THAT SUBSECTION:

5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

PC–12

SYSTEM NAME:

Property Records.

SYSTEM LOCATION:

At each overseas Peace Corps office and in Administrative Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Name, room number, and country of assignment for Peace Corps staff and volunteers who have physical property assigned to them.

CATEGORIES OF RECORDS IN THE SYSTEM:

U.S. Government property assigned to Peace Corps staff or volunteers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):

40 U.S.C. 483(b) and (c); and the Peace Corps Act, 22 U.S.C. 2501, et seq.

PURPOS(E):

To record and account for U.S. Government property assigned to Peace Corps staff and volunteers (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, C, D, E, F, G, H, I, K, and L apply to this system. Records may also be discovered to the Department of State or General Services Administration to account for the disposition of Federal property.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in computerized databases.

RETRIEVABILITY:

By name, room number, or country.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are retained at overseas posts for two years after the Peace Corps staff member or volunteer terminates assignment, then destroyed. Headquarters records are retained for five years, then retired to the Federal Records Center and destroyed after 20 years.

SYSTEM MANAGER(S) AND ADDRESS:

For overseas records, Country Directors in each country in which Peace Corps maintains a program. For headquarters records, Director, Office of Administrative Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Peace Corps staff and volunteers.

PC–13

SYSTEM NAME:

Personnel Security Records.

SECURITY CLASSIFICATION:

Some classified information may be included in this system.

SYSTEM LOCATION:

Security Office, Office of Human Resource Management/Security Office, Peace corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for Peace Corps staff employment and volunteer service; and individuals considered for access to classified information or restricted areas and/or personnel security determinations as contractors and experts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative information regarding an individual's character, conduct, background, and behavior.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

E.O. 10450; The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To record information used to determine eligibility or suitability for employment or volunteer service, including eligibility to serve as a Peace Corps contractor. (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, I, J, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On Page and in a computerized database.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Available only to employees with appropriate security clearance and a need to know. Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are maintained in the Security Office in the Office of Human Resources for seven years from the date of the last investigative activity and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Security Staff, Office of Human Resource Management, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k) (1), (2), and (5), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. The Peace Corps may, in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requester will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document that includes the requester's social security number and full signature. Additional information may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subjects; Federal agencies; employers, schools, references, and other sources of information about the record subject.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k) (1), (2), and (5), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(H), and (f).

PC–14

SYSTEM NAME:

Administrative Grievance Records.

SYSTEM LOCATION:

Office of Human Resource Management, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Peace Corps staff who have filed an administrative grievance or grievance appeal or have filed a complaint with the Merit Systems Protection Board, Federal Labor Relations Authority, Federal Mediation and Conciliation Service, or other organization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grievance, appeal, and arbitration files containing petitions, complaints, charges, evidentiary materials, records of hearings or other matters regarding administrative grievances or arbitration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM; (INCLUDES ANY REVISIONS OR AMENDMENTS):

5 U.S.C. chapters 71–79; and E.O. 11491.

PURPOSE(S):

To resolve administrative complaints or grievances (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, I, J, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name or social security number.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in Lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are retired to the Federal Records Center to be maintained and then destroyed 25 years after the close of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resource management, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(5), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. The Peace Corps may, in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subjects; witnesses to any occurrences giving rise to a grievance, appeal or other action; hearing records and affidavits and other documents used or usable in connection with grievance, appeal, and arbitration hearings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in that subsection: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G) (e)(4)(H), and (f).

PC–15

SYSTEM NAME:

Overseas Executive Selection and Support.

SYSTEM LOCATION:

Overseas Executive Selection and Support, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Peace Corps Country Director positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, social security number, professional resume, letter of interest, personal essay, and other background information regarding qualifications for Peace Corps Country Director.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To supply qualified applicants for Country Director positions with the Peace Corps (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, D, E, F, G, I, J, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in computerized database.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Paper records are maintained in locked file cabinets in a secure room. Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Applications not resulting in appointment are destroyed after two years. Applications resulting in appointment are forwarded to the Official Personnel Folder maintained by Human Resource Management and disposed of in accordance with the record schedule for Official Personnel Folders.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Overseas Executive Selection and Support, Peace Corps, 111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(5), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. The Peace Corps may, in its discretion, fully grant individuals requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR Part 308.

RECORD SOURCE CATEGORIES:

Record subject and personal references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in that subsection: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

PC-16

SYSTEM NAME:

Travel Files.

SYSTEM LOCATION:

Transportation Division, Office of Administrative Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526, and domestic and overseas field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Peace Corps employee, volunteer, contractor, or other individual engaged in authorized official travel for the Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel authorizations; itineraries; Government Bills of Lading; packing letters and passport numbers for overseas travel; passports for staff, trainees and volunteers; and other travel related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):

5 U.S.C. 5701 et seq.; 31 U.S.C. 3512; 31 U.S.C. 3901 et seq.; and the Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To account for, and issue payments as a result of, authorized official Peace Corps travel (Last Revised; August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, C, D, E, F, G, H, I, and K apply to this system. Records may also be disclosed to transportation carriers for providing transportation services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper.

RETRIEVABILITY:

By name or by country.

SAFEGUARDS:

Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are maintained at Peace Corps headquarters and domestic and overseas field offices for three years after the individual leaves the agency or performs the travel, and are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Transportation Division, Office of Administrative Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526 and the office heads of Peace Corps' domestic and overseas field offices.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a drivers license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject, supervisors, or other Peace Corps staff.

PC–17

SYSTEM NAME:

Peace Corps Volunteer Database Management System.

SYSTEM LOCATION:

(1) Office of Volunteer Recruitment and Selection, and (2) Office of Financial Services, Peace Corps, 1111 20th St., NW, Washington, DC 20526; and (3) Peace Corps regional offices in eleven U.S. cities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Peace Corps volunteers and applicants for volunteer service including Peace Corps United Nations volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

FOR RECORD SYSTEMS MAINTAINED BY THE OFFICE OF VOLUNTEER RECRUITMENT AND SELECTION AND THE PEACE CORPS REGIONAL OFFICES:

Name, address, telephone number, social security number, racial an ethnic data if volunteered, educational background, job history, personal essays, military status, marital status, job preferences, language skills, technical skills, practical experience, and geographic preference.

FOR RECORD SYSTEMS MAINTAINED BY THE OFFICE OF FINANCIAL SERVICES:

Pay allowance documents including correspondence, pay allowance forms, designation of beneficiary, name of next of kin, trainee registration form, and service and termination documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(Includes any revisions or amendments):

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To maintain records of individuals who apply for Peace Corps volunteer service, to record actions taken on the applications, and to record volunteer pay allowances (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, I, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name, social security number, education, technical skills and practical experience, geographic preference, Peace Corps status (applicant, trainee, etc.).

SAFEGUARDS:

Paper records are maintained in locked file cabinets in a secure room. Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are maintained at Peace Corps headquarters for six months after a volunteer is sent overseas, and are then sent to the Federal Records Center, where they are destroyed after seven years.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Director, Volunteer Recruitment and Selection, (2) Director, Office of Financial Services, Peace Corps, 111 20th St., NW, Washington, DC 20526; and (3) Directors of the Peace Corps regional offices in eleven U.S. cities.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(5), this system has been exempted from the provisions of the Privacy Act of 1974, that permit access and correction. The Pease Corps may, in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be

required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification maybe required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR Part 308.

RECORD SOURCE CATEGORIES:

Record subject, personal references, and educational institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in that subsection: 5 U.S.C. 552 (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

PC–18

SYSTEM NAME: FORMER PEACE CORPS VOLUNTEERS AND STAFF DATABASE.

SYSTEM LOCATION:

Office of Volunteer Support, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Peace Corps staff and volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address; telephone number; social security number; date of birth; educational background; college attended; current interest in volunteer service; type of volunteer or staff duty assignment; and country of assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

The Peace Corps Act, 22 U.S.C. 2501, et seq.

PURPOSE(S):

To maintain contact and communications with former Peace Corps volunteers and former Peace Corps staff. (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, C, D, E, G, H, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name, social security number, and country of service.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are retained in the Office of Inspector General for five years, then retired to the Federal Records Center and destroyed after 50 years.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Volunteer Support, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING, RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject.

PC–19

SYSTEM NAME:

Office of Inspector General Investigative Records.

SYSTEM LOCATION:

Office of Inspector General, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Peace Corps employees, volunteers, contractors, or consultants who are subjects of investigations; witnesses, complainants, informants, suspects, or other persons who have been identified as part of the Office of Inspector General (OIG) investigative process.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence related to investigations; information provided by subjects, witnesses, or investigatory or law enforcement organizations; reports of investigation, including affidavits, statements, transcripts of testimony, or other documents relating to investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

PURPOSE(S):

To record investigations under the Inspector General Act of 1978, as amended (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, I, J, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name and case number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets in a secure room. Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Depending on the nature of the case, records are retained for periods of five or ten years and then destroyed, or are retained permanently, in accordance with approved NARA Records Disposition Schedule N1–490–95–06.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(2), this system has been exempted from the

provisions of the Privacy Act of 1974 that permit access and correction. At the Inspector General's discretion, individual requests for access and correction may be granted if it is determined that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject, current and former Peace Corps employees, volunteers, contractors, witnesses, complainants, informants, suspects or other persons associated with an investigation, and documents or other materials pertinent to investigations.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in that subsection: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

PC–20

SYSTEM NAME:

Building Management, Parking, and Metro Pool.

SYSTEM LOCATION:

Office of Administrative Services, Peace Corps, 1111 20th St., NW, Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Peace Corps employee, volunteer, contractor, or other individual working in agency-controlled space or applying for agency controlled parking space or Metro Pool.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, home address, room number and telephone number; application for building security pass, parking space, or Metro Pool cards; vehicle (including bicycles) year, make, state in which registered, vehicle tag, and permit number; and individually-assigned building facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR 101–20.104; 5 U.S.C. 7905; and the Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To record information concerning building management, parking space, and Metro Pool (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USER AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, I, and K apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage:

On paper and in a computerized database.

Retrievability:

By name, social security number, address, room number, permit number, vehicle tag, and agency organization code.

Safeguards:

Computer records are maintained in a secure, password protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings. *Retention and Disposal:* Records are kept as long as the individual has a building pass, has a controlled parking space or is on the waiting list for a parking space, or has a Metro Pool pass, and are destroyed thereafter on an annual basis.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administrative Services, Peace Corps, 1111 20th Street, NW, Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject.

PC–21

SYSTEM NAME:

Crisis Corps Database.

SYSTEM LOCATION:

Crisis Corps, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Peace Corps volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, education, country of service, dates of service, volunteer assignment area, technical skills, language proficiencies, and suitability for assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To track returned volunteers who are interested in short-term assignment to crisis areas (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USER:

General routine uses A, C, E, F, G, H, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name, address, telephone number, education, country of service, dates of service, volunteer assignment area, technical skills, language proficiencies, and suitability for assignment.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in

lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are retained at Peace Corps headquarters until declared inactive, then retired to the Federal Records Center, where they are retained for five years and then destoryed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Crisis Corps, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject.

PC–22

SYSTEM NAME:

Volunteer Health Record.

SYSTEM LOCATION:

Office of Medical Services, 1111 20th St., NW, Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Peace Corps volunteers and applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, social security number, date of birth, sex, dates of service, country of service, medical and dental history including medical examination forms and fitness for duty reports, medical claims, related correspondence and cables, medical payment records, treatment, hospitalization, and disposition of the case, if applicable and reports from health care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

22 U.S.C. 2504(e); and the Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To record medical and dental information concerning Peace Corps Volunteers and applicants (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses F and K apply to this system.

RECORDS MAY ALSO BE DISCLOSED TO:

1. The Occupational Safety and Health Administration, Department of Labor, for job-related or service-related injuries or illnesses; and

2. The Office of Workers' Compensation Programs, Department of Labor, for workers' compensation claims.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Paper records are maintained in a lockable file room. Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are retained in the Office of Medical Services at Peace Corps headquarters for two years, then retired to the Federal Records Center, where they are maintained for 25 years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Medical Services, Peace Corps, 1111 20th St., NW, Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requests will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject, physicians or other health care providers, and other medical sources including laboratories.

PC–23

SYSTEM NAME:

Health Benefits Program for Peace Corps Volunteers.

SYSTEM LOCATION:

Office of Medical Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Peace Corps Volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, social security number, volunteer identification number, date of birth, sex, medical and dental history, dates of service, country of service, x-rays and reports from physicians and other health care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

22 U.S.C. 2504(e); and the Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To authorize health care for volunteers, pay health care bills, provide eligibility lists to health care contractors and insurance carriers, and to confirm volunteer eligibility for service (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses F and K apply to this system. Records may also be disclosed to:

1. Peace Corps health benefits contractors to administer health care to Volunteers; and

2. The Office of Workers' Compensation Programs, Department of Labor, for workers' compensation claims.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database.

RETRIEVABILITY:

By name, social security number, and volunteer identification number.

SAFEGUARDS:

Paper records are maintained in a lockable file room. Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are retained at the Office of Administrative Services at Peace Corps headquarters for two years, then retired to the Federal Records Center, where they are maintained for 25 years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Medical Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject, physicians or other health care providers, and other medical sources including laboratories.

PC–24

SYSTEM NAME:

Privacy and Freedom of Information Act Requests.

SYSTEM LOCATION:

Office of Administrative Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request access to records containing personally identifiable information subject to the Privacy Act and/or individuals who request copies of records under the Freedom of Information Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of individuals making requests, including date of request, related correspondence, and Peace Corps' response to request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: (INCLUDES ANY REVISIONS OR AMENDMENTS):

The Peace Corps Act, 22 U.S.C. 2501 et seq., the Privacy Act, 5 U.S.C. 552a, and the Freedom of Information Act, 5 U.S.C. 552.

PURPOSE(S):

To record requests for records made under the Privacy Act and/or the Freedom of Information Act (Last Revised: August 2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, E, F, H, G, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and in a computerized database. Records reflecting requests made by individuals under the Privacy Act are initially created and maintained by the Office of Administrative Services. Records reflecting requests made by members of the public under the Freedom of Information Act are logged in and responded to by the Office of the Executive Secretariat; the records are maintained by the Office of Administrative Services once responses to requests are completed.

RETRIEVABILITY:

By name or date of request.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are kept onsite as long as active and then retired to the Federal Records Center to be destroyed after six years in accordance with General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administrative Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION, ACCESS, AND CONTESTING RECORD PROCEDURES:

An individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Individuals making requests under the Privacy and/or Freedom of Information Acts.

PC–25

SYSTEM NAME:

Early Termination and Special Action.

SYSTEM LOCATION:

Office of Special Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Peace Corps volunteers and trainees who were subject to early termination or a special action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, country of assignment, program number, termination reports, staff recommendations, cables, financial information, travel arrangements, and documentation of special actions taken in regard to family and/or friends of volunteers or trainees who have died, disappeared, or become severely ill or injured.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

To record any unusual or extraordinary action or circumstances happening during service or leading to the early termination of the volunteer or trainee?

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, D, E, F, H, I, K, and L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and/or in a computerized database.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are kept on-site for the duration of the volunteer's service in-country, and then destroyed after five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Special Services, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

PROCEDURES FOR NOTIFICATION, ACCESS, AND CONTESTING:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Records subject, family members and their legal representatives, Peace Corps supervisors, physicians or other health care providers, and the Department of State.

Dated: This notice is issued in Washington, DC, on August 25, 2000.

Doug Greene,

Chief, Information Officer and Associate Director for Management.

[FR Doc. 00–22559 Filed 9–1–00; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24629; File No. 812–12098]

Aetna Life Insurance and Annuity Company, et al.

August 30, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 ("Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

Applicants: Aetna Life Insurance and Annuity Company ("ALIAC") and its Variable Annuity Account B ("VA B"), Aetna Insurance Company of America ("AICA," and together with ALIAC, "Aetna"), and any other separate accounts of ALIAC or AICA ("Future Accounts") that support in the future variable annuity contracts and certificates that are substantially similar in all material respects to the VA B contracts described (collectively, "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the Act to the extent necessary to permit, under specified circumstances, the recapture of bonuses (defined below) applied to purchase payments made under: (i) deferred variable annuity contracts and certificates, described herein, that ALIAC will issue through VA B (the contracts and certificates, including certificate data pages and endorsements, are collectively referred to herein as "VA B Contracts"), and (ii) deferred variable annuity contracts and certificates, including certificate data pages and endorsements, that Aetna may issue in the future through VA B or any Future Account (collectively, "Accounts") that are substantially similar in all material respects to the VA B Contracts ("Future Contracts," and together with the VA B Contracts, "Contracts"). Applicants also request that the order being sought extend to any National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Aetna, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts offered through the Accounts (collectively "Aetna Broker-Dealers").

FILING DATE: The application was filed on May 16, 2000, and amended and restated on August 25, 2000. Applicants represent that they will file an amended and restated application during the notice period to conform to the representations set forth herein.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on September 19, 2000 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Aetna Insurance Company of America, 151 Farmington Avenue, TS31, Hartford, Connecticut 06156, Attn: J. Neil McMurdie, Esq.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. ALIAC is a stock life insurance company organized under the insurance laws of the State of Connecticut in 1976. ALIAC serves as depositor for VA B, which was established in 1976 pursuant to authority granted under a resolution of ALIAC's Board of Directors. ALIAC also serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under Future Contracts. ALIAC may establish one or more additional Future Accounts for which it will serve as depositor.

2. AICA is a stock life insurance company organized under the insurance

laws of the State of Connecticut in 1990 and redomesticated under the laws of the State of Florida on January 5, 2000. AICA serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under Future Contracts. AICA may establish one or more additional Future Accounts for which it will serve as depositor.

3. ALIAC is the principal underwriter of VA B and is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended (the "1934 Act"), and is a member of the NASD. ALIAC or a successor Aetna Broker-Dealer acting as principal underwriter will enter into arrangements with one or more registered broker-dealers, which may or may not be affiliated with ALIAC or a successor Aetna Broker-Dealer, to offer and sell VA B Contracts. ALIAC or a successor Aetna Broker-Dealer acting as principal underwriter also may enter into these arrangements with banks that may be acting as broker-dealers without separate registration under the 1934 Act pursuant to legal and regulatory exceptions. Further, ALIAC or successor Aetna Broker-Dealer may distribute VA B Contracts directly. ALIAC or a successor Aetna Broker-Dealer may enter into similar arrangement for Future Contracts. ALIAC may act as principal underwriter for Future Accounts and distributor for Future Contracts. A successor Aetna Broker-Dealer also may act as principal underwriter for any of the Accounts and distributor for any of the Contracts.

4. VA B is a segregated asset account of ALIAC. VA B is registered with the Commission as a unit investment trust under the Act. VA B will fund the variable benefits available under the VA B Contracts. Units of interest in VA B under the VA B Contracts it funds will be registered under the Securities Act of 1933 (the "1933 Act"). ALIAC and AICA may issue Future Contracts through the Accounts. That portion of the assets of VA B that is equal to the reserves and other VA B Contract liabilities with respect to VA B is not chargeable with liabilities arising out of any other business of ALIAC. Any income, gains or losses, realized or unrealized, from assets allocated to VA B are, in accordance with the VA B Contracts, credited to or charged against VA B, without regard to other income, gains or losses of ALIAC. The same will be true of any Future Account of ALIAC or AAICA.

The following is a discussion of the VA B Contracts. Future Contracts funded by VA B or any Future Account of ALIAC or AICA will be substantially similar in all material respects to the VA B Contracts. Certain anticipated differences between VA B Contracts and Future Contracts are noted below. VA B Contracts will be sold by registered representatives of ALIAC, Aetna Broker-Dealers, and affiliated or unaffiliated broker-dealers with which ALIAC or a successor Aetna Broker-Dealer enters into selling agreements, as indicated above. ALIAC or a successor Aetna Broker-Dealer enters into selling agreements, as indicated above. ALIAC may issue VA B Contracts as individual or group flexible premium deferred variable annuity contracts. ALIAC may issue VA B Contracts in connection with retirement plans that qualify for favorable federal income tax treatment under Section 403 of the Internal Revenue Code of 1986 ("Code") as a tax sheltered annuity or Section 408 of the Code as an individual retirement annuity ("Qualified Contracts"). ALIAC also may issue VA B Contracts on a non-tax qualified basis ("Non-Qualified Contracts"). VA B Contracts may be used for other purposes in the future, or offered only as Qualified Contracts or Non-qualified Contracts.

6. A non-Qualified Contract may be purchased with an initial payment of at least $15,000 (under Option Package I), or $5,000 (under Option Package II or Option Package III) (the Option Packages are defined below). The minimum initial purchase payment for a Qualified Contract is $1,500. Subsequent purchase payments must be at least $50 (ALIAC may change this amount from time to time). ALIAC will accept purchase payments of more that $1,000,000 subject to ALIAC's consent. The maximum age of any owner or annuitant on the date ALIAC establishes the Contract owner's account is 90. ALIAC does not accept subsequent purchase payments after the annuity date.

7. An owner can allocate purchase payments or account value to one or more sub-accounts of VA B, each of which will invest in a corresponding portfolio of a mutual fund. In addition, VA B Contracts will permit purchase payments to be allocated to fixed interest options funded through the ALIAC Guaranteed Account (the "Guaranteed Account") and the fixed account which provide a guarantee of the purchase payment allocated thereto and interest for specified periods. A positive or negative adjustment, or "market value adjustment" ("MVA"), will be made to the account value in the Guaranteed Account upon a withdrawal, surrender or transfer from the Guaranteed Account prior to the end of the guaranteed term. When a death benefit is paid under a VA B Contract within six months of the date of death, only a positive aggregate MVA amount, if any, is applied to the account value attributable to amounts withdrawn from the Guaranteed Account. This provision does not apply upon the death of a spousal beneficiary or joint contract owner who continued the account after the first death. Because of the MVA feature, fixed interest option interests are registered under the 1933 Act pursuant to a Form S–2 Registration Statement. Contract owners may receive income phase payments after annuitization on a fixed or variable basis. Under the terms of the VA B Contracts, Contract owners may not annuitize, *i.e.*, commence income phase payments, during the first account year.

8. At the time of application, a Contract owner may elect the premium bonus option (a "bonus owner"). The election is irrevocable. The premium bonus option may not be available under all Contracts or in all states. For each purchase payment made by a bonus owner during the first account year, measured from the date ALIAC establishes the bonus owner's account ("Year 1 Payment"), ALIAC will credit a premium bonus ("bonus") to the bonus owner's account. No bonus will be credited on amounts reinvested following a full withdrawal. Presently, ALIAC intends to offer a 4% bonus, which will subject the bonus owner to a 0.50% annual bonus option charge. In the future, ALIAC may offer reduced bonuses and/or reduced bonus option charges. ALIAC will allocate bonuses among the Investment Options (defined below) in the same proportion as the corresponding purchase payments are allocated by the bonus owner. ALIAC will fund bonuses from its general account assets.

ALIAC will recapture the bonus under the following circumstances: (i) ALIAC will recapture all bonuses if the bonus owner returns a VA B Contract to ALIAC for a refund during the 10 day (or longer, if required) "free-look" period; (ii) the amount of any account value, step-up value or roll-up value death benefit will not include any bonus credited to the bonus owner's account after or within 12 months of the date of death; and (iii) unless prohibited by state law, ALIAC will recapture all or part of the bonus if the bonus owner withdraws any Year 1 Payment during the first seven account years. The amount of the bonus forfeited will equal the amount of the bonus, multiplied by the Year 1 Payment(s) withdrawn that are subject to a withdrawal charge (defined below), divided by total Year 1 Payments. For Contracts issued in New

York, the amount of the bonus forfeited will be calculated by: (i) determining the amount of the bonus that is subject to forfeiture according to the following table:

Completed account years at the time of the withdrawal	[1]Amount of premium bonus subject to forfeiture (in percent)
Less than 5	100
5 or more but less than 6	75
6 or more but less than 7	50
7 or more	0

and (ii) multiplying that amount by the Year 1 Payment(s) withdrawn that are subject to a withdrawal charge divided by total Year 1 Payments. Applicants represent that the amounts recaptured will never exceed the bonuses, but any gain would remain part of the Contract's value.

The early withdrawal charge is calculated separately for each purchase payment withdrawn. For purposes of calculating early withdrawal charges, ALIAC considers that a Contract owner's first purchase payment to the account (first in) is the first withdrawn (first out). Earnings may be withdrawn after all purchase payments have been withdrawn. There is no early withdrawal charge for withdrawal of earnings.

9. Thirty-seven sub-accounts of VA B will be available under the VA B Contracts following the effectiveness of the Form N–4 registration statement related to such Contracts. Each sub-account will invest in shares of a corresponding portfolio ("Portfolio") of an open-end, diversified series management investment company registered under the Act (each a "Fund," collectively, the "Funds"). The Funds currently available under the VA B Contracts are managed by various entities affiliated and unaffiliated with Aetna. The sub-accounts and the fixed interest options will comprise the initial "Investment Options" under the VA B Contracts.

10. ALIAC, at a later date, may determine to create an additional sub-account or sub-accounts of VA B to invest in any additional Portfolio or Portfolios, or other such underlying portfolios or other investments as may now or in the future be available. Similarly, sub-accounts of VA B may be combined or eliminated from time to time. Future Contracts may offer Funds managed by the same as well as other investment advisers.

11. Three options packages ("Option Package I," "Option Package II," and "Option Package III," collectively, "Option Packages") are available under the VA B Contracts. Contract owners select an Option Package at the time of application. The premium bonus option may be elected with any of the Option Packages. The principal differences among the Option Packages relate to the mortality and expense risk charge, death benefit on death of the annuitant, minimum initial purchase payment, free withdrawals, and availability of certain withdrawal charge waivers.

12. The VA B contracts also provide for various withdrawal options, annuity benefits and payout annuity options, as well as transfer privileges among Investment Options and Option Packages, dollar cost averaging, and other features. VA B Contracts have a withdrawal charge, calculated as a percentage of purchase payments. The withdrawal charge schedule for VA B Contracts issued outside New York is as follows: 7% in years less than two (from receipt of the purchase payment), 6% in years two or more but less than four, 5% in year four or more but less than five, 4% in year five or more but less than six, 3% in year six or more but less than seven, and 0% in years seven or more. The withdrawal charge schedule for VA B Contracts issued in New York is as follows: 7% in year less than one, 6% in year one or more but less than two, 5% in year two or more but less than three, 4% in year three or more but less than four, 3% in year four or more but less than five, 2% in year five or more but less than six, 1% in year six or more but less than seven, and 0% in years seven or more. A different withdrawal charge schedule applies to certain Roth IRA contracts issued through VA B outside the state of New York before the effectiveness of the Form N–4 registration statement related to the VA B Contracts. In any one account year, Contract owners may withdraw free of withdrawal charge 10% of the account value as of the beginning of such account year. Under Option Package III, Contract owners may carry forward into successive account years any unused percentage of the 10% free withdrawal amount, up to 30% of the account value.

VA B Contracts also have (i) an asset-based mortality and expense risk charge at the annual rate of 0.80% for Option Package I, 1.10% for Option Package II, and 1.25% for Option Package III during the accumulation phase, and 1.25% during the income phase (all Option Packages) assessed against the net assets of each sub-account; and (ii) an asset-based administrative expense charge at an annual rate of 0.15% during the accumulation phase for administration expenses (up to 0.25% during the income phase, but currently not deducted) assessed against the net assets of each sub-account. Also, each year during the accumulation phase, a $30 annual maintenance fee is deducted proportionately from each Investment Option. The annual maintenance fee will be waived if the Contract owner's account value is $50,000 or greater on the date this fee is due. The underlying Funds each impose investment management fees and charges for other expenses.

Contract owners who elect the premium bonus option will pay, during the first seven account years, an annual premium bonus option charge equal to 0.50% of the account value allocated to the sub-accounts. ALIAC may also deduct this charge from amounts allocated to the fixed interest options.

When sales of the VA B Contracts are made to individuals or a group of individuals in a manner that results in savings of sales or administrative expenses, ALIAC may reduce or eliminate the early withdrawal charge, annual maintenance fee, mortality and expense risk charge, administrative expense charge, or premium bonus option charge. Charges that apply under Future Contracts will be described in the related Form N–4 registration statements for such Contracts.

13. Applicants seek exemption pursuant to Section 6(c) of the Act from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent deemed necessary to permit Aetna to recapture bonuses credited under Contracts in the following three instances: (i) Aetna will recapture all bonuses if the bonus owner returns the Contract to Aetna for a refund during the 10-day (or longer, if required) free-look period; (ii) the amount of any account value, step-up value or roll-up value death benefit will not include any bonus credited to a bonus owner's account after or within 12 months of the date of death; and (iii) unless prohibited by state law, ALIAC will recapture the bonus according to the forfeiture schedule described above if the bonus owner withdraws Year 1 Payment(s) during the first seven account years.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants

request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions summarized above with respect to the VA B Contracts and any Future Contracts funded by VA B or Future Accounts, that are issued by Aetna and underwritten or distributed by ALIAC or any Aetna Broker-Dealers. Applicants undertake that Future Contracts funded by VA B or any Future Account, in the future, will be substantially similar in all material respects to the VA B Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants represent that it is not administratively feasible to track the bonus amount in the Accounts after the bonus is applied. Applicants explain that, accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the Accounts, including the bonus amount, during the period when the bonus owner's interest in the bonus is not completely vested. Applicants state that, therefore, during such periods, the aggregate asset-based charges assessed against a bonus owner's annuity account value will be higher than those that would be charged if the bonus owner's annuity account value did not include the bonus.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the bonus recapture provisions summarized herein would not deprive a bonus owner of his or her proportionate share of the issuer's current net assets. Applicants state that a bonus owner's interest in the amount of the bonus allocated to his or her annuity account upon receipt of a Year 1 Payment is not vested until the applicable free-look period has expired without return of the Contract. Similarly, Applicants state that a bonus owner's interest in any bonus amount credited on Year 1 Payments that are withdrawn during the first seven account years, or credited to the account after or within 12 months of the date of death, also is not vested. Until or unless the amount of any bonus is vested, Applicants submit that Aetna retains the right and interest in the bonus amount, although not in any earnings attributable to that amount. Thus, Applicants argue that, when Aetna recaptures any bonus, it is simply retrieving its own assets and, because a bonus owner's interest in the bonus is not vested, the bonus owner has not been deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the bonus owner's annuity account value (taking into account the investment experience attributable to the bonus).

5. In addition, with respect to bonus recapture upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow a bonus owner exercising that privilege to retain a bonus amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that, if Aetna could not recapture the bonus, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of any bonus amount credited to the account after or within 12 months of the date of death is designed to provided Aetna with a measure of protection from "anti-selection." Applicants state that the risk here is that, rather than spreading purchase payments over a number of years, a bonus owner will make Year 1 Payment(s) shortly before death, thereby leaving Aetna less time to recover the cost of a bonus, to its financial detriment.

7. Applicants assert that the bonus will be attractive to and in the interest of investors because it will permit bonus owners to put an amount greater than their Year 1 Payment(s) to work for them in the selected Investment Options and because bonus owners will retain any earning attributable to the bonus and, unless any of the contingencies summarized above apply, the principal amount of the bonus.

8. Applicants submit that the provisions for recapture of any applicable bonus under the VA B Contracts do not, and any such Future Contract provisions will not, violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any bonus under the circumstances described herein with respect to the Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. Arguably, Aetna's recapture of the bonus might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts. Applicants contend, however, that the recapture of the bonus is not violative of Section 22(c) and rule 22c–1. Applicants argue that the recapture of the bonus does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. Applicants state that, to effect a recapture of a bonus, Aetna will redeem interests in a bonus owner's annuity account at a price determined on the basis of the current net asset value of the respective Accounts. Applicants represent that the amount recaptured will never exceed the amount of the bonus that Aetna paid out of its general account assets. Applicants further state that, although bonus

owners will be entitled to retain any investment gain attributable to the bonus, the amount of such gain will be determined on the basis of the current net asset value of the respective Accounts. Applicants assert that, therefore, no dilution will occur upon the recapture of the bonus. Applicants also submit that the second harm that rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the bonus. However, to avoid any uncertainty as to full compliance with the Act, Applicants requested an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the bonus under the Contracts.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22663 Filed 9–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting, Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 4, 2000.

A closed meeting will be held on Thursday, September 7, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Thursday, September 7, 2000 will be: institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The office of the Secretary at (202) 942–7070.

Dated: August 31, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–22769 Filed 8–31–00; 11:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43216; File No. SR–ISE–00–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Relating to Decimal Pricing

August 28, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2000, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the ISE. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules to provide for the implementation of decimal pricing. The ISE believes the proposed rule change conforms to the uniform industry approach to implementing decimal pricing contained in the joint submission to the Commission by the ISE and other interested parties dated July 24, 2000, entitled "Decimals Implementation Plan for the Equities and Options Markets" ("Decimals Plan"). The text of the Proposed rule change is below. Proposed new language is in italics. Deletions are in brackets.

Rule 710. Minimum *Pricing Variations* [Fractional Changes]

(a)–(c) No change.

(d) Conversion to Decimal Pricing Increments. Notwithstanding any other provision of this Rule, the Exchange will convert to decimal pricing increments for all options traded on the Exchange by April 9, 2001, or by such other date as the President of the Exchange shall determine consistent with any order issued by the Securities and Exchange Commission (SEC) or plan filed by the Exchange with the SEC. The President shall determine the schedule for this conversion, and shall designate those options that will trade in decimal increments during the conversion process. Decimal pricing increments shall be as follows:

(1) if the options contract is trading at less than $3,000 per option, $.05; and

(2) if the options contract is trading at $3.00 per option or higher, $.10;

provided that the President shall have the ability to designate certain options as trading at an increment of $.01 as part of a pilot program conducted in conformity with a plan filed with the SEC.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has ordered the securities exchanges and other interested parties to implement decimal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] ISE provided written notice to the Commission on July 26, 2000 of its intent to file this proposal. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

pricing in their markets.[6] Pursuant to that Order, the Commission has required the exchanges to submit proposed rule changes implementing a uniform decimals phase-in schedule. The purpose of the proposed rule change is to implement the decimalization phase-in schedule that the exchanges and other interested parties have adopted in the Decimals Plan.

2. Statutory Basis

The ISE believes that the proposal is consistent with the provisions of section 6(b)(5) of the Act[7] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The ISE has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing.[10] Acceleration of the operative date will ensure that the ISE is able to operate in accordance with the terms and conditions of the Decimals Plan. For these reasons, the Commission finds good cause to designate that the proposal become operative immediately upon filing.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to file number SR–ISE–00–07 and should be submitted by September 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22592 Filed 9–1–00; 8:45 am]

BILLING CODE 8010–01–M

[6] Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] The Decimals Plan contemplates that the options exchanges may wish to consider a pilot program for one-cent minimum price variations for quoting in a limited number of options ("Penny Pilot") at some point in the implementation process. The Commission expects that, before implementing a Penny Pilot, the options exchanges will carefully coordinate on such issues as the selection and number of options to be included in the pilot to ensure the continued orderly operation of the markets and clearing organizations. In particular, the Commission expects that the options exchanges will consult with the Commission regarding the impact on market-wide capacity. Before implementing a Penny Pilot, each options exchange should also submit appropriate rule filings to the Commission under Section 19(b) of the Exchange Act.

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3404]

Culturally Significant Objects Imported for Exhibition Determinations: "Rembrandt Creates Rembrandt: Art and Ambition in Leiden, 1629–1631"

AGENCY: United States 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 No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Rembrandt Creates Rembrandt: Art and Ambition in Leiden, 1629–1631" imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Isabella Stewart Gardner Museum, Boston, Massachusetts, from on or about September 23, 2000 to on or about January 7, 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 Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: August 30, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–22660 Filed 9–1–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3405]

Culturally Significant Objects Imported for Exhibition Determinations: "Taoism And the Arts of China"

AGENCY: United States 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 No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Taoism And the Arts of China," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Art Institute of Chicago in Chicago, Illinois from on or about November 2, 2000 to on or about January 7, 2001, and at the Asian Art Museum in San Francisco, California from on or about February 21, 2001 to on or about May 12, 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 the 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: August 30, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–22661 Filed 9–1–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice No. 3386]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on Tuesday, September 26, 2000, at 9:30 AM in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the forty fourth session of the Marine Environment Protection Committee (MEPC 45) of the International Maritime Organization (IMO). MEPC 45 will be held from October 2—October 6, 2000. Proposed U.S. positions on the agenda items for MEPC 45 will be discussed.

The major items for discussion for MEPC 45 will include the following:

a. Harmful aquatic organisms in ballast water;

b. Implementation of the OPRC Convention and the OPRC-HNS Protocol;

c. Harmful effects of the use of anti-fouling paints for ships;

d. Consideration and adoption of amendments to mandatory instruments;

e. Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

f. Interpretation and amendments of MARPOL 73/78 and related Codes

g. Prevention of air pollution from ships;

h. Promotion of implementation and enforcement of MARPOL 73/78 and related Codes;

i. Formal safety assessment including environmental indexing of ships; and

j. Matters related to the 1973 Intervention Protocol.

Members of the public may attend this meeting up to the seating capacity of the room. For further information or documentation pertaining to the meeting, contact Lieutenant Commander John Meehan, U.S. Coast Guard Headquarters (G–MSO–4), 2100 Second Street, SW, Washington, DC 20593–0001; Telephone: (202) 267–2714; E-mail: jmeehan@comdt.uscg.mil; or On-line at: *http://www.uscg.mil/hq/gm/mso/mso4/mepc.html*

Dated: August 28, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 00–22658 Filed 9–1–00; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice No. 3387]

Shipping Coordinating Committee; International Maritime Organization Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m. on Tuesday, October 3, 2000, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to prepare for the Eighty-Second Session of the International Maritime Organization (IMO) Legal Committee (LEG 82) and to also prepare for the next meeting of the Joint International Maritime Organization/International Labor Organization Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers (IMO/ILO Ad Hoc Expert Working Group).

IMO headquarters in London will host LEG 82, which will be held from 16 through 20 October 2000. The Legal Committee will continue work on a draft protocol to the Athens Convention Relating to the Carriage of Passengers and Their Luggage By Sea, and on the draft Wreck Removal Convention. The committee will also consider a proposal to increase the limits of compensation under the 1992 protocols to the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. The Legal Committee will then turn its attention to the implementation of the International Convention on Liability and Compensation for Damage in Connection With the Carriage of Hazardous and Noxious Substances by Sea, and time will also be allotted to address any other issues on the Legal Committee's work program on which there are questions or comments.

The IMO/ILO Ad Hoc Expert Working Group will meet at IMO headquarters from 30 October through 3 November 2000, and will continue to examine the issue of financial security for seafarers and their dependents with regard to compensation in cases of personal injury, death and abandonment. During this meeting, the group will review and analyze information received in response to a questionnaire sent to member states.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. For further information, or to submit views in

advance of the meeting, please contact Captain Joesph F. Ahern or Lieutenant Daniel J. Goettle, U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street, S.W., Washington, D.C. 20593–0001; telephone (202) 267–1527; fax (202) 267–4496.

Dated: August 28, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 00–22659 Filed 9–1–00; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Delegation of Authority No. 236–3]

Delegation by the Under Secretary for Public Diplomacy and Public Affairs of Certain Functions to the Assistant Secretary for Educational and Cultural Affairs or in the Absence Thereof, to the Principal Deputy Assistant Secretary and Deputy Assistant Secretary for Policy and Resources

By virtue of the authority vested in me as the Under Secretary of State for Public Diplomacy and Public Affairs by law, including by Delegation of Authority No. 234 of October 1, 1999, and the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), and to the extent permitted by law, I hereby delegate to the Assistant Secretary for Educational and Cultural Affairs:

a. The functions in P.L. 89–259 (79 Stat. 985) (22 U.S.C. 2459) (providing for immunity from judicial seizure for cultural objects imported into the U.S. for temporary exhibits).

b. The functions in sections 101(1)(15)(J) and 212(j) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J) and 1182(J)), and section 641 of P.L. 104–208 (8 U.S.C. 1372(h)(2)(A)) (relating to the designation of exchange visitor programs and related functions).

c. The functions in the North/South Center Act of 1991 (22 U.S.C. 2075) (relating to the operation of the Center for Cultural and Technical Interchange Between North and South).

d. The functions in the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2054) (relating to the operation of the Center for Cultural and Technical Interchange Between East and West).

e. The functions in Executive Order 12555 of March 10, 1986 (delegating functions under the Convention on Cultural Property Implementation Act (19 U.S.C. 2601)).

f. The functions in the Arts and Artifacts Indemnity Act (20 U.S.C. 971) (relating to the certification of national interest for exhibits to provide indemnification).

g. Representation of the Secretary of State on the Federal Council on the Arts and Humanities (pursuant to 20 U.S.C. 958).

h. Representation of the Secretary of State on the United States Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation/ Japan-United States Friendship Commission (pursuant to 22 U.S.C. 2901; one of two Department of State members).

i. The functions in section 102 of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2452) (relating to the provision by grant, contract or otherwise for a wide variety of educational and cultural exchanges).

Notwithstanding any other provision of this Order, the Under Secretary of State for Public Diplomacy and Public Affairs and Public Affairs may at any time exercise any function or authority delegated or reserved by this delegation of authority.

Functions delegated by this delegation of authority may be redelegated, to the extent consistent with law.

Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This delegation shall be published in the **Federal Register**.

Delegation of Authority No. 236–2 is hereby superseded.

Dated: August 28, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–22662 Filed 9–1–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings

Aviation Proceedings, Agreements filed during the week ending August 18, 2000.

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7804
Date Filed: August 14, 2000
Parties: Members of the International Air Transport Association
Subject: PTC COMP 0663 dated 11 August 2000, Composite Expedited Resolution 017c (except USA/US Territories), Intended effective date: 1 September 2000

Docket Number: OST–2000–7805
Date Filed: August 14, 2000
Parties: Members of the International Air Transport Association
Subject: PTC COMP 0664 dated 11 August 2000, Composite Expedited Resolutions 017g, 024d (USA/US Territories), Intended effective date: 1 September 2000

Docket Number: OST–2000–7806
Date Filed: August 15, 2000
Parties: Members of the International Air Transport Association
Subject: CSC/22/Meet/003/2000 dated July 31, 2000, Finally Adopted Resolutions & Recommended Practices r1–4, Minutes—CSC/22/Meet/003/2000 dated August 4, 2000, Intended effective date: 1 October 2000

Docket Number: OST–2000–7807
Date Filed: August 15, 2000
Parties: Members of the International Air Transport Association
Subject: CBPP/6/Meet/004/99 dated July 31, 2000, Finally Adopted Resos & Recommended Practices r1–2, Minutes—CBPP/6/Meeting/003/99 dated April 20, 2000, Intended effective date: 1 October 2000

Docket Number: OST–2000–7808
Date Filed: August 15, 2000
Parties: Members of the International Air Transport Association
Subject: PTC COMP 0665 dated 11 August 2000, Composite Expedited Resolutions 014m, 300 (Baggage) (Except USA/US Territories), Intended effective date: 1 October 2000

Docket Number: OST–2000–7809
Date Filed: August 15, 2000
Parties: Members of the International Air Transport Association
Subject: PTC12 CAN–EUR 0064 dated 25 July 2000, Canada-Europe Resolutions r1–r28, Minutes—PTC12 CAN–EUR 0065 dated 2 August 2000, Tables—PTC12 CAN–EUR FARES 0019 dated 4 August 2000, Intended effective date: 1 January 2001

Docket Number: OST–2000–7810
Date Filed: August 15, 2000
Parties: Members of the International Air Transport Association
Subject: PTC COMP 0666 dated 11 August 2000, Composite Expedited Resolution 201 (USA/US Territories), Intended effective date: 1 October 2000

Docket Number: OST–2000–7811
Date Filed: August 15, 2000
Parties: Members of the International Air Transport Association
Subject: PTC2 EUR–ME 0095 dated 14 July 2000, Europe-Middle East

Resolution r1–r37, Minutes—PTC2 EUR–ME 0099 dated 15 August 2000, Tables—PTC2 EUR–ME FARES 0042 dated 14 July 2000, Intended effective date: 1 January 2001

Docket Number: OST–2000–7812

Date Filed: August 15, 2000

Parties: Members of the International Air Transport Association

Subject: PTC COMP 0667 dated 11 August 2000, Composite Expedited Resolution 002kk, 010h, (USA/US territories), Intended effective date: 1 November 2000

Docket Number: OST–2000–7813

Date Filed: August 16, 2000

Parties: Members of the International Air Transport Association

Subject: PTC2 EUR–ME 0097 dated 4 August 2000, Mail Vote 082–TC2 Europe-Middle East Resolutions, Intended effective date: 1 January 2001

Docket Number: OST–2000–7822

Date Filed: August 17, 2000

Parties: Members of the International Air Transport Association

Subject: PTC1 0148 dated 11 August 2000, TC1 Caribbean Expedited Resolution 002d, Intended effective date: 15 September 2000

Docket Number: OST–2000–7823

Date Filed: August 17, 2000

Parties: Members of the International Air Transport Association

Subject: PTC1 0147 dated 11 August 2000, TC1 Areawide Expedited Resolutions 015v, 311t, Intended effective date: 15 September 2000

Docket Number: OST–2000–7824

Date Filed: August 17, 2000

Parties: Members of the International Air Transport Association

Subject: PTC1 0149 dated 11 August 2000, TC1 Within South America Expedited Resolutions 002o, 071b, Intended effective date: 15 September 2000

Docket Number: OST–2000–7829

Date Filed: August 18, 2000

Parties: Members of the International Air Transport Association

Subject: PTC1 0150 dated 15 August 2000, TC1 Longhaul (except between USA and Chile), Expedited Resolutions r1–r6, Intended effective date: 1 October 2000

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–22640 Filed 9–1–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Certificates of Public Convenience; Applications

Notice of Applications for Certificates Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending August 18, 2000. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–200–7803.

Date Filed: August 15, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 5, 2000.

Description: Application of Florida Coastal Airlines, Inc. ("Florida Coastal") pursuant to 49 U.S.C. Section 41738 and Subpart A of the Procedural Regulations and Section 204.3, applies for issuance of commuter air carrier authority to enable Florida Coastal to engage in interstate and foreign scheduled air transportation operations under Part 298 of the Department's Economic Regulations.

Docket Number: OST–2000–7815.

Date Filed: August 16, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 2000.

Description: Application of Heartland Airlines, LLC pursuant to 49 U.S.C. Section 41102, and Subpart Q, requests a certificate of public convenience and necessity, authorizing it to engage in interstate scheduled air transportation of persons, property and mail between any point or points in the United States, its territories and possessions, or the District of Columbia, on the one hand, and any other point or points in the United States, its territories and possessions.

Dorothy Y. Beard,

Federal Register Liaison.

Application of Florida Coastal Airlines, Inc. for Authority To Conduct Scheduled Commuter Air Carrier Operations Pursuant to 49 U.S.C. § 41738; Application of Florida Coastal Airlines, Inc.

[Docket OST–00–7803–1]

August 15, 2000.

Communications with respect to this document should be sent to: Dean A. Forest, President and Chief Executive Officer, Florida Coastal Airlines, Inc., 3000 Curtis King Boulevard, Ft. Pierce, FL 34946, (561) 468–2255 (tel.), (561) 268–2209 (fax).

Notice: Under the Procedural Regulations of the Department, any interested person may file an Answer to this Application with the DOT's Docket Section and must serve all persons named on the attached Service List. Answers to this Application are due to be filed on or before August 24, 2000.

Application of Florida Coastal Airlines, Inc. for Authority To Conduct Scheduled Commuter Air Carrier Operations Pursuant to 49 U.S.C. § 41738; Application of Florida Coastal Airlines, Inc.

[Docket OST–00–__]

August 15, 2000.

Florida Coastal Airlines, Inc. ("Florida Coastal") hereby applies, pursuant to 49 U.S.C. § 41738 of the Federal Aviation Statutes, Subpart A of the Procedural Regulations and Section 204.3 of the Economic Regulations of the Department of Transportation (the "Department"), for issuance of commuter air carrier authority to enable Florida Coastal to engage in interstate and foreign scheduled air transportation operations under Part 298 of the Department's Economic Regulations. Florida Coastal is currently engaged in on-demand passenger charter operations utilizing small aircraft pursuant to Part 298 and Part 135 of the Federal Aviation Regulations, and desires to commence scheduled operations on November 20, 2000.

In support of this Application, Florida Coastal states as follows:

Application of HeartLand Airlines, LLC for a certification of public convenience and necessity pursuant to 49 U.S.C. 41102 to engage in scheduled interstate air transportation; Application of HeartLand Airlines, LLC

[Docket OST–2000–7815–1]

August 16, 2000.

Communications with respect to this document should be sent to:
William R. Howard, Chairman and Chief Executive Officer, HEARTLAND AIRLINES, LLC, 3270 Terminal Drive, Vandalia, Ohio 45377, (937) 264–9800
Robert P. Silverberg, Esq., Michael W. Ambrose, Jr., Esq., Silverberg, Goldman & Bikoff, LLP, 1101 30th Street, NW., Suite 120, Washington, DC 20007, (202) 944–3300, rsilverberg@sgbdc.com
Attorneys for HEARTLAND AIRLINES, LLC

Any person may support or oppose this Application by filing an answer and serving a copy of the answer on all persons served with this Application on or before September 6, 2000.

OFB holding interests in the airline may change. HeartLand will update this citizenship information as warranted.

3. *Authority Requested By HeartLand.* HeartLand hereby requests authority to engage in interstate scheduled air transportation of persons, property and mail between any point or points in the United States, its territories and possessions, or the District of Columbia, on the one hand, and any other point or points in the United States, its territories and possessions.

4. *Service Proposal.* By the end of the first 12 months of operations HeartLand and its code share partner (or partners) will be conducting weekday operations in a total of fourteen nonstop Dayton city-pair markets using a total of six 717 aircraft and six J–31 or similar turboprop aircraft. HeartLand is submitting a route map identifying the weekday markets it proposes to serve or could potentially serve as Exhibit 18. Because of the commercial sensitivity of this marketing information, and because HeartLand will not commence service until June 2001, the applicant is requesting in a separate motion to withhold Exhibit 18 from public disclosure pursuant to Rule 12 of the DOT's Rules of Practice, 14 CFR § 302.12.

[FR Doc. 00–22641 Filed 9–1–00; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Certificates of Public Convenience; Applications

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending August 11, 2000. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302, 1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–7748.
Date Filed: August 7, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 28, 2000.
Description: Application of Aero Continente Chile, S.A. ("AC Chile") pursuant to 49 U.S.C. Sections 41301, 41302 and Subpart Q, applies for a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of passengers, property and mail between a point or points in the Chile nonstop and/or via intermediate points and a point or points in the United States, and in charter services, including between points in the United Sates and points outside, thereof, pursuant to Part 212 of the Department's regulations.

Docket Number: OST–2000–7752.
Date Filed: August 7, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 28, 2000.
Description: Application of Aerorepublica S.A. pursuant to 49 U.S.C. Section 41302, 14 CFR Part 211 and subpart Q, requests an initial foreign air carrier permit authorizing it to perform charter foreign air transportation of persons, property and mail between a point or points in the Republic of Colombia and Orlando, Florida.

Dorothy Y. Beard,
Federal Register Liaison.

Application of Aero Continente Chile S.A. for a Foreign Air Carrier Permit Pursuant to 49 U.S.C. Section 41301 (Chile-U.S. Scheduled); Application of Aero Continente Chile S.A. for a Foreign Air Carrier Permit

August 7, 2000.

It is Requested that this Application be processed under the expedited nonhearing procedures pursuant to 14 CFR section 302.1740 of the Procedural Regulations of the Department of Transportation.

COMMUNICATIONS with respect to this document may be sent to: Lawrence D. Wasko, Jacquelyn N. Gluck, 1150 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036, Attorneys for Aero Continente Chile S.A., (202) 862–4370.

NOTICE: Any person may file an answer in support of or in opposition to this Application with the Department of Transportation on or before August 28, 2000 and serve a copy of Applicant and persons served with this Application.

Application of Aero Continente Chile S.A. for a Foreign Air Carrier Permit Pursuant to 49 U.S.C. Section 41301 (Chile-U.S. Schedule; Application of Aero Continente Chile S.A. for a Foreign Air Carrier Permit

[Docket OST–00–]

Comes now Aero Continente Chile S.A. ("AC Chile" or "Applicant") pursuant to 49 U.S.C. sections 41301 and 41302, and the Economic Regulations of the Department of Transportation (the "Department"), 14 CFR Part 211, and hereby applies for a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of passengers, property and mail between a point or points in the Chile nonstop and/or via intermediate points and a point or points in the United States, and in charter services, including between points in the United States and points outside thereof, pursuant to Part 212 of the Department's regulations. AC Chile requests that this application be processed under the expedited non-hearing procedures set forth Subpart Q, Rule 1740, of the Department's Rules of Practice, 14 CFR Part 302. In support of this application AC Chile respectfully represents and alleges as follows:

1. The full name of the company is Aero Continente Chile S.A. The address of Applicant's principal office is Merchant Pereira 367, Oficina 801, Providencia, Santiago de Chile, Chile.

Application of AeroRepública S.A. for a Foreign Air Carrier Permit Pursuant to 49 U.S.C. § 41302 (Colombia-Orlando, Florida Passenger Charters); Application of AeroRepública S.A. for a Foreign Air Carrier Permit

[Docket OST–00–7752–1]

August 7, 2000.

Communications with respect to this document should be addressed to: Mark W. Atwood, Sher & Blackwell, 1850 M St., NW., Washington, DC 20036, (202) 463–2513, Counsel for AeroRepública S.A.

Notice: Any person may support or oppose this application by filing an answer and serving a copy on the above-named persons and all persons on the attached service list. Answers are due by August 28, 2000.

Application of AeroRepública S.A. for a Foreign Air Carrier Permit Pursuant to 49 U.S.C. § 41302 (Colombia-Orlando, Florida Passenger Charters); Application of AeroRepública S.A.

[Docket OST–00–]

Pursuant to 49 U.S.C. § 41302 and 14 CFR part 211, AeroRepública S.A., an air carrier of the Republic of Colombia, hereby requests an initial foreign air carrier permit authorizing it to perform charter foreign air transportation of persons, property and mail between a point or points in the Republic of Colombia and Orlando, Florida.

AeroRepública proposes to begin its service to the United States by offering four charter flights per week between Bogotá and Orlando, Florida, using B–727–200 aircraft. It plans to inaugurate this service on November 1, 2000.

In support of its request, AeroRepública submits the following information as required by 14 CFR § 211.20:

[FR Doc. 00–22642 Filed 9–1–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7847]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Transportation on matters relating to the training, qualifications, licensing, certification and fitness of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: MERPAC will meet on Tuesday, September 19, 2000, from 8 a.m. to 4 p.m. and on Wednesday, September 20, 2000, from 8 a.m. to 3 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before September 5, 2000. Written material and requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before September 1, 2000.

ADDRESSES: MERPAC will meet on both days at the Catholic Seamen's Club, 2330 1st Avenue, Seattle, WA 98121. Further directions regarding the location of the Catholic Seamen's Club may be obtained by contacting Ms. Diane Bentley at (206) 441–4773. Send written material and requests to make oral presentations to Lieutenant Commander Luke B. Harden, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Commander Luke B. Harden, Acting Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–0229, fax 202–267–4570, or e-mail mgould@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of September 19, 2000 Meeting

The full committee will meet to discuss the objectives for the meeting. The committee will then break up into the following working groups: Recommendations on a training and assessment program for officers in charge of a navigation watch "coming up through the hawsepipe," and; Recommendations on a training and assessment program for officers in charge of an engineering watch "coming up through the hawsepipe." The phrase "coming up through the hawsepipe" means informal in-service training leading from the rating of unlicensed seaman to a position as licensed officer. New working groups may be formed to address any new issues or tasks. At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

Agenda of September 20, 2000, Meeting

The agenda includes the following:

(1) Introduction.

(2) Oath of Office to New Members and Re-appointed Members.

(3) Working Group Reports.

(a) Recommendations on a Training and Assessment Program for Officers in Charge of a Navigation Watch Coming Up Through the Hawsepipe.

(b) Recommendations on a Training and Assessment Program for Officers in Charge of an Engineering Watch Coming Up Through the Hawsepipe.

(4) Other items to be discussed:

(a) Standing Committee—Prevention Through People

(b) Other items brought up for discussion by the committee or the public

Procedural

Both meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than September 5, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than September 1, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to the Executive Director no later than September 1, 2000.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 25, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–22566 Filed 9–1–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7861]

Navigation Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet to discuss various issues relating to the safety of navigation. The meeting is open to the public.

DATES: NAVSAC will meet on Friday, September 22, 2000, from 8:00 a.m. to 5 p.m. and on Saturday, September 23, 2000, from 8:00 a.m. to 1:00 p.m. The meeting may close early if all business is finished. Written material should reach the Coast Guard on or before September 13, 2000. Requests to make oral presentations should reach the Coast Guard on or before September 13, 2000. Requests to have a copy of your material distributed to each member of the Council should reach the Coast Guard on or before September 13, 2000.

ADDRESSES: NAVSAC will meet at the Renaissance Madison Hotel, 515 Madison Street, Seattle, WA 98104. Send written material and requests to make oral presentations to Ms. Margie G. Hegy, Commandant (G-MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Executive Director of NAVSAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Puget Sound Panel Report.

(2) All weather navigation.

(3) High speed craft.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation, please notify the Executive Director no later than September 13, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than September 13, 2000. If you would like a copy of your material distributed to each member of the Council in advance of the meeting, please submit 25 copies to the Executive director no later than September 13, 2000.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 29, 2000.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistance Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–22679 Filed 9–1–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Waimea-Kohala Airport, Kamuela, Hawaii

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the state of Hawaii, Department of Transportation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and Title, 14 Code of Federal Regulations, Part 150 (FAR Part 150). These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 14, 2000, the FAA determined that the noise exposure maps submitted by the state of Hawaii, Department of Transportation under FAR Part 150 were in compliance with applicable requirements. On August 9, 2000, the Associate Administrator for Airports approved six of the seven program measures included in the Waimea-Kohala Airport Noise Compatibility Program. One measure was approved as a voluntary measure, five measures were approved outright, and one measure was disapproved pending the submission of additional information.

EFFECTIVE DATE: The effective date of the FAA's approval of the Waimea-Kohala Airport Noise Compatibility Program is August 9, 2000.

FOR FURTHER INFORMATION CONTACT: David Welhouse, Airport Planner, Federal Aviation Administration, Honolulu Airports District Office, HNL–621. Telephone: (808) 541–1243. Mailing address: P.O. Box 50244, Honolulu, Hawaii 96850–0001. Street address: 300 Ala Moana Blvd., Room 7–128, Honolulu, HI 96813. Documents reflecting this FAA action may be reviewed at this location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for the Waimea-Kohala Airport, effective August 9, 2000.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a Noise Exposure Map, may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in FAR Part 150 and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the

program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District office in Honolulu, Hawaii.

The State of Hawaii, Department of Transportation submitted to the FAA on January 25, 2000, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 1997 through November 1998. The Waimea-Kohala Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 14, 2000. Notice of this determination was published in the **Federal Register** on February 29, 2000.

The Waimea-Kohala Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in Section 104(b) of the Act. The FAA began its review of the program on February 14, 2000, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained seven proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The Associate Administrator for Airports approved the overall program effective August 9, 2000.

Six of the seven program elements were approved. The following measure was approved as a voluntary measure: The State of Hawaii, Department of Transportation, Airports Division should remind pilots of the existing noise sensitive areas within the Airport environs and that the overflight of these areas should be avoided. The following five measures were approved outright: Use comprehensive planning and zoning to maintain compatible land use; Acquiring avigation easements from landowners that presently have compatible land but may become incompatible due to future development; Acquiring development rights from land owners which presently own land that has a compatible land use; Review and modification of Subdivision Regulations; the use of tax incentives to maintain compatible land use. The following measure was disapproved pending submission of additional information: Land banking will allow DOTA to purchase, in fee, existing compatible properties to ensure that these properties would remain compatible land uses.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on August 9, 2000. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the state of Hawaii, Department of Transportation, Airport Division.

Issued in Hawthorne, California on August 21, 2000.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 00–22623 Filed 9–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (00–01–C–00–FHR) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Friday Harbor Airport, Submitted by the Port of Friday Harbor, Friday Harbor Airport, Friday Harbor, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Friday Harbor Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before October 5, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve Simpson, Airport Manager, at the following address: P.O. Box 889, Friday Harbor, WA 98250.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Friday Harbor Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (00–01–C–00–FHR) to impose and use PFC revenue at Friday Harbor Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 28, 2000, the FAA determined that the application to impose and use the revenue from a PFC, submitted by the Port of Friday Harbor, Friday Harbor Airport, Friday Harbor, Washington, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 28, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2000.

Proposed charge expiration date: June 30, 2005.

Total requested for use approval: $226,806.

Brief description of proposed project: Land purchase (Lots 37, 44, 46, 47, 49 and 50); Stormwater improvements; Runway overlay; Runway safety area improvements; Taxiway lighting and signage; Snow removal equipment; Airport personnel training system; Pavement rehabilitation; Security fencing.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice

and other documents germane to the application in person at the Friday Harbor Airport.

Issued in Renton, Washington on August 28, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–22624 Filed 9–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7827]

Notice of Request for Comments on Renewing the Approval for Three Information Collections: Inspection, Repair and Maintenance; Driver Qualification Files; and Controlled Substances and Alcohol Use and Testing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This action informs the public that FMCSA intends to request the Office of Management and Budget (OMB) to renew approval for three information collections. The first information collection, "Inspection, Repair and Maintenance," relates to a motor carrier's responsibility for ensuring that employees safely maintain and operate its commercial motor vehicles. The second information collection, "Driver Qualification Files," relates to requirements that a motor carrier employ only safe drivers to operate its commercial motor vehicles. The third information collection, "Controlled Substances and Alcohol Use and Testing," relates to requirements that a motor carrier test certain commercial motor vehicle operators for controlled substance use and alcohol abuse. This notice is required by the Paperwork Reduction Act.

DATES: You must submit comments by November 6, 2000.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. Be sure to include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comment is received, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Valerie Height, (202) 366–0901, Office of Policy, Plans and Regulation, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

1. *Title:* Inspection, Repair and Maintenance.

OMB Number: 2126–0003.

Background: Motor carriers must maintain, or require maintenance of, records documenting the inspection, repair and maintenance activities performed on their owned and leased motor vehicles. There are no prescribed forms. The records are used by the FMCSA and its representatives to verify motor carriers' compliance with the inspection, repair, and maintenance standards in part 396 of the Federal Motor Carrier Safety Regulations.

Respondents: Motor carriers, commercial motor vehicle (CMV) drivers.

Estimated Total Annual Burden: 31,484,826 hours.

2. *Title:* Driver Qualification Files.

OMB Number: 2126–0004.

Background: Motor carriers must maintain a driver qualification file for each CMV driver they employ. The file contains the minimum amount of information necessary to document that a driver is qualified to drive a CMV in interstate commerce.

Motor carriers and the FMCSA primarily use the driver's qualification file to ensure that a person: (1) is physically qualified to safely operate a CMV; (2) has the experience and/or training to safely operate the type(s) of CMV he or she will be assigned to drive; (3) has the appropriate driver's license; and (4) has not been disqualified to operate a CMV.

Respondents: Motor carriers and CMV drivers.

Estimated Total Annual Burden: 941,856 hours.

3. *Title:* Controlled Substances and Alcohol Use and Testing.

OMB Number: 2126–0012.

Background: Motor carriers must conduct alcohol and controlled substances testing on their CMV drivers who drive larger CMVs (over 26,000 lbs.) requiring a commercial driver's license. The FMCSA uses the information collected to determine whether the motor carriers are using drivers who are alcohol-free and drug-free while driving trucks, buses, and other commercial motor vehicles. The reporting survey of the management information system (MIS) allows the agency to adjust the random testing rates for the industry when the industry shows performance improvements. The agency bases the adjustment upon the results of a small, statistically significant sample of motor carriers.

The FMCSA has significantly reduced the estimated total annual burden for this information collection. The agency calculated burdens for OMB No. 2126–0012 using a uniform method jointly developed by the Office of the Secretary, Department of Transportation (DOT) and each of the DOT modal administrations. Many of the paperwork burdens included in the old estimate for OMB No. 2126–0012 were eliminated because they are more appropriately accounted for under information collections relating to the DOT regulations for alcohol and controlled substances testing and Department of Health and Human Services Regulations for drug testing.

Respondents: 650,000 motor carriers.

Estimated Total Annual Burden: 573,490 hours.

Public Comments Invited

We invite you to comment on any aspect of these information collections, including, but not limited to (1) whether the information collection is necessary and useful for the FMCSA to meet its goal of reducing truck crashes; (2) the accuracy of the estimated burdens; (3) ways to improve the quality, usefulness, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. We will summarize and/or include all comments submitted in response to this notice in our request for OMB's clearance of these information collections.

Electronic Access and Filing

You may submit or retrieve comments online through the Docket Management System (DMS) at *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days

each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Authority: 23 U.S.C. 315 and 49 CFR 1.73.

Issued on: August 29, 2000.

Clyde J. Hart, Jr.,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 00–22625 Filed 9–1–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7721]

Notice of Request for Comments on Renewing the Approval for Two Information Collections: Request for Revocation of Authority Granted and Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers under 49 U.S.C. 13902(c)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FMCSA is seeking public comments about our intent to request the Office of Management and Budget's (OMB) approval to renew two information collections. The first information collection, "Request for Revocation of Authority Granted," notifies the FMCSA of a voluntary request by a motor carrier, freight forwarder, or property broker to amend or revoke its registration. The second information collection, "Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers under 49 U.S.C. 13902(c)," is used by Mexican motor carriers to apply for authority to operate across the border into the United States. The Paperwork Reduction Act requires the publication of this notice.

DATES: Please submit comments by November 6, 2000.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to 202/493–2251; or submit electronically at http://dmses.dot.gov/submit. Be sure to include the docket number appearing in this notice's heading. All comments received may be examined and copied at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Marian Mills Lee, (202) 358–7051, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh St., SW, Washington, D.C., 20590. Office hours are from 7:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

1. *Title:* Request for Revocation of Authority Granted.

OMB Approval Number: 2126–0018.

Background: Title 49 of the United States Code (U.S.C.) authorizes the Secretary of Transportation to promulgate regulations governing the registration of for-hire motor carriers of regulated commodities (49 U.S.C. 13902), surface freight forwarders (49 U.S.C. 13903), and property brokers (49 U.S.C. 13904). The FMCSA carries out this registration program under authority delegated by the Secretary of Transportation. Under Title 49 U.S.C. 13905, each registration is effective from the date specified and remains in effect for such period as the Secretary of Transportation determines appropriate by regulation. Title 49 U.S.C. 13905(c) grants the Secretary the authority to amend or revoke a registration at the registrant's request. Form OCE–46 is used by transportation entities to voluntarily apply for revocation of their registration in whole or in part. The form requests the registrant's docket number, name and address, and the reasons for the revocation request.

Respondents: Motor carriers, freight forwarders, and brokers.

Average Burden per Response: 30 minutes.

Estimated Total Annual Burden: 500 hours (1,000 motor carriers x 30 minutes/60 minutes).

2. *Title:* Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers under 49 U.S.C. 13902(c).

OMB Approval Number: 2126–0019.

Background: Title 49 U.S.C. 13902(c) contains basic licensing procedures for registering foreign motor carriers to operate across the border into the United States. Title 49 CFR 368 contains related regulations. The FMCSA carries out this registration program under authority delegated by the Secretary of Transportation. Foreign motor carriers use Form OP–2 to apply for registration with the FMCSA. The form requests information on the motor carrier's location, form of business, ownership and control, and proposed operations.

Respondents: Foreign motor carriers.

Average Burden per Response: 2 hours.

Estimated Total Annual Burden: 2,000 hours (1,000 motor carriers x 2 hours).

Public Comments Invited

You are asked to comment on any aspect of these information collections, including: (1) the necessity and usefulness of the information collection for the FMCSA to meet its goal in reducing truck crashes; (2) the accuracy of the estimated burdens; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

Electronic Access and Filing

You may submit or retrieve comments online through the Docket Management System (DMS) at http://dmses.dot.gov/submit. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the DMS web site.

You may download an electronic copy of this document by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at http://www.nara.gov/fedreg and the Government Printing Office's web

page at: http://www.access.gpo.gov/nara.

Authority: 23 U.S.C. 315; 44 U.S.C. 3506 and 49 CFR 1.73.

Issued on: August 29, 2000.

Clyde J. Hart, Jr.,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 00–22626 Filed 9–1–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Internal Corrosion in Gas Transmission Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: The Office of Pipeline Safety (OPS) is issuing this bulletin to owners and operators of natural gas transmission pipeline systems to advise them to review their internal corrosion monitoring programs and operations. Operators should consider factors that influence the formation of internal corrosion, including gas quality and operating parameters. Operators should give special attention to pipeline alignment features that may contribute to internal corrosion by allowing condensates to settle out of the gas stream.

This action follows a review of incidents involving internal corrosion, some of which resulted in loss of life, injuries, and significant property damage. OPS' preliminary investigation of a recent gas transmission pipeline incident found wall thinning on damaged pipe associated with the incident. The wall thinning is consistent with that caused by internal corrosion.

ADDRESSES: This document can be viewed at the OPS home page at: http://ops.dot.gov.

FOR FURTHER INFORMATION CONTACT: Richard Huriaux, (202) 366–4565, or by e-mail, richard.huriaux@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Internal corrosion control in gas transmission pipelines is addressed in the federal pipeline safety regulations at 49 CFR 192.475 and 192.477. Internal corrosion is most often found in gas transmission pipelines and appurtenances in the vicinity of production and gathering facilities or storage fields.

An OPS review of incident reports and inspections indicated that better industry guidance is needed to determine the best practices for monitoring the potential for internal corrosion in gas transmission pipelines. Some methods for monitoring internal corrosion are weight loss coupons, radiography, water chemistry tests, in-line inspection tools, and electrical, galvanic, resistance and hydrogen probes. Operators should refer to available recommended practices provided by national consensus standards organizations, such as the American Petroleum Institute, National Association of Corrosion Engineers, and Gas Piping Technology Committee (GPTC) for guidance in addressing internal corrosion issues.

OPS has worked with GPTC to revise the Guide for Gas Transmission and Distribution Piping Systems (Guide) to better address the control of internal corrosion. GPTC is considering modifying the Guide to address design considerations, corrective measures, and detection techniques for internal corrosion.

II. Advisory Bulletin (ADB–00–02)

To: Owners and Operators of Gas Transmission Pipelines.

Subject: Internal Corrosion in Gas Transmission Pipelines.

Purpose: To advise owners and operators of natural gas transmission pipelines of the need to review their internal corrosion monitoring programs and operations.

Advisory: Owners and operators of natural gas transmission pipelines should review their internal corrosion monitoring programs and consider factors that influence the formation of internal corrosion, including gas quality and operating parameters. Operators should give special attention to pipeline alignment features that may contribute to internal corrosion by allowing condensates to settle out of the gas stream.

This action follows a review of incidents involving internal corrosion, some of which resulted in loss of life, injuries, and significant property damage. OPS' preliminary investigation of a recent gas transmission pipeline incident found internal wall thinning on damaged pipe associated with the incident. The wall thinning is consistent with that caused by internal corrosion.

Gas transmission owners and operators should thoroughly review their internal corrosion management programs and operations:

- Review procedures for testing to determine the existence or severity of internal corrosion associated with their pipelines. Some methods for monitoring internal corrosion are weight loss coupons, radiography, water chemistry tests, in-line inspection tools, and electrical, galvanic, resistance and hydrogen probes.
- Special attention should be given to specific conditions, including flow characteristics, pipeline location (especially drips, deadlegs, and sags, which are on-line segments that are not cleaned by pigging or other methods, fittings and/or "stabbed" connections which could affect gas flow, operating temperature and pressure, water content, carbon dioxide and hydrogen sulfide content, carbon dioxide partial pressure, presence of oxygen and/or bacteria, and sediment deposits.
- Review conditions in pipeline segments downstream of gas production and storage fields.
- Review conditions in pipeline segments with low spots, sharp bends, sudden diameter changes, and fittings that restrict flow or velocity. These features can contribute to the formation of internal corrosion by allowing condensates to settle out of the gas stream.

Issued in Washington, DC, on August 29, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–22568 Filed 9–1–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Combined Performance Review Board (PRB)

AGENCY: Treasury Department.

ACTION: Notice of members of Combined Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Combined PRB for the Bureau of Engraving and Printing, the Financial Management Service, the U.S. Mint and the Bureau of the Public Debt. The Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the four bureaus, except for executives below the Assistant Commissioner level in the Financial Management Service. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

Composition of Combined PRB: The Board shall consist of at least three voting members. In case of an appraisal of a career appointee, more than half of

the members shall consist of career appointees. The names and titles of the Combined PRB members are as follows:

Primary Members

Bradford E. Cooper, Associate Director for Circulating, Mint—Chairperson; Theodore P. Langlois, Deputy Executive Director (Marketing and Sales), PD; Joel C. Taub, Associate Director (Management), E&P; and Larry D. Stout, Assistant Commissioner, Federal Finance, FMS.

Alternate Members

Jay M. Weinstein, Associate Director for Policy and Management & CFO, Mint; Debra Hines, Assistant Commissioner (Public Debt Accounting), PD; Gregory D. Carper, Associate Director (Chief Financial Officer), E&P; and Scott Johnson, Assistant Commissioner, Management & CFO, FMS.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Bradford E. Cooper, U.S. Mint, Associate Director for Circulating, 801 9th St., NW., 6th Floor, Washington, DC 20220, (202) 354–7400.

This notice does not meet the Department's criteria for significant regulations.

Bradford E. Cooper,

Associate Director for Circulating, U.S. Mint.

[FR Doc. 00–22465 Filed 9–1–00; 8:45 am]

BILLING CODE 4840–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–58]

Delegations of Authority To Decide Petitions for Relief

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the delegations of authority to decide petitions and supplemental petitions submitted pursuant to Parts 171 or 172 of the Customs Regulations granted to Fines, Penalties, and Forfeitures Officers; Headquarters officials in field locations; the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters; the Director, International Trade Compliance Division, Customs Headquarters; and the Assistant Commissioner, Office of Regulations and Rulings, Customs Headquarters, with regard to petitions and supplemental petitions for relief submitted concerning claims for liquidated damages, seizures and penalties incurred under laws administered by Customs. The document also identifies those cases where the Secretary of the Treasury has retained all administrative authority to decide petitions and supplemental petitions for relief.

EFFECTIVE DATE: October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202) 927–2344.

SUPPLEMENTARY INFORMATION: Notwithstanding any other delegations of authority that have been previously published, the following are delegations of authority granted to the enumerated Customs officers to decide petitions and supplemental petitions for relief under authority granted to the Secretary of the Treasury by sections 618 and 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 and 1623), and section 320 of title 46, United States Code App. (46 U.S.C. App. 320), and section 5321 of title 31, United States Code (31 U.S.C. 5321).

I. Original Petitions for Relief

A. *Fines, Penalties, and Forfeitures Officers.* Fines, Penalties, and Forfeitures Officers are hereby delegated authority to decide original petitions as follows:

(1) *Liquidated damages.* All claims for liquidated damages arising from breach of the basic importation bond for failing to file or late filing of entry summaries or failing to pay or late payment of estimated duties. Any other claim for liquidated damages for breach of any Customs bond when the amount of the claim does not exceed $200,000.

(2) *19 U.S.C. 1592, 19 U.S.C. 1593a.* Any fines, penalties, or forfeitures incurred under the provisions of section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), or section 593A of the Tariff Act of 1930, as amended (19 U.S.C. 1593a), when the total amount of those fines, penalties, or forfeitures does not exceed $50,000.

(3) *19 U.S.C. 1436, 1453, 1595a(b) and 1641.* All fines, penalties, or forfeitures incurred under the provisions of sections 436, 453 or 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1436, 19 U.S.C. 1453 and 19 U.S.C. 1641, respectively) and any penalties incurred under the provisions of section 596 of the Tariff Act of 1930, as amended (19 U.S.C. 1595a(b)) for delivering merchandise from the place of unlading without Customs authorization or without appropriate examination in violation of the provisions of section 448 or 499 of the Tariff Act of 1930, as amended (19 U.S.C. 1448 or 19 U.S.C. 1499, respectively) when the amount of the claim does not exceed $200,000.

(4) *Other laws administered by Customs.* Except as noted in subparagraphs (A)(1), (A)(2) or (A)(3), and except where the Secretary of the Treasury retains jurisdiction: any fines, penalties, or forfeitures or claims for liquidated damages incurred under any other law administered by Customs when the total amount of the fines, penalties, and forfeitures incurred with respect to any one offense does not exceed $100,000.

B. *Chief, Penalties Branch, Office of Regulations and Rulings.* The Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, is delegated authority to decide all petitions for relief submitted with regard to cases which are neither enumerated as remaining under the original jurisdiction of the Secretary of the Treasury nor have been delegated to the Fines, Penalties, and Forfeitures Officers.

C. *Assistant Commissioner, Office of Regulations and Rulings.* Notwithstanding any other delegation of authority, the Assistant Commissioner, Office of Regulations and Rulings, Customs Headquarters, or his delegate, has authority to remit or mitigate any penalties assessed against super carriers for failure to manifest narcotic drugs pursuant to 19 U.S.C. 1584(a)(2).

D. *Secretary of the Treasury.* The Secretary of the Treasury, or his delegate retains jurisdiction over original petitions for relief filed with regard to the following cases:

(1) *Certain civil monetary penalties.* All jurisdiction over the remission or mitigation of monetary penalties imposed for violation of the provisions of 31 U.S.C. 5321.

(2) *Certain monetary instrument seizures.* Seizures, subject to forfeiture under the provisions of title 31, United States Code, section 5317, of monetary instruments for violation of the provisions of title 31, United States Code, section 5316, when the value of the monetary instruments exceeds $500,000.

(3) *Export control.* Seizures of merchandise subject to forfeiture under the provisions of title 22, United States Code, section 401, when the value of the merchandise exceeds $500,000.

(4) *Failure to declare merchandise.* All fines, penalties, and forfeitures arising from failure to declare merchandise in violation of the provisions of title 19, United States Code, section 1497, when total liability exceeds $250,000.

(5) *Conveyance seizures.* Seizures of conveyances for violations other than those involving importation or transportation of controlled substances when the value of the conveyance exceeds $500,000.

(6) *Property seized under 18 U.S.C. 981 relating to violations of 18 U.S.C. 1956 or 1957.* Seizures of property under 18 U.S.C. 981 relating to violations of 18 U.S.C. 1956 or 1957 when the value of that property exceeds $500,000.

II. Supplemental Petitions for Relief

A. *Decisions of Fines, Penalties, and Forfeitures Officers.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating additional relief to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to a designated Headquarters official assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641 where the amount of the penalty assessed exceeds $10,000 will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters.

B. *Decisions of the Chief, Penalties Branch, Office of Regulations and Rulings.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, and the Chief, Penalties Branch, believes that no further relief is warranted will be forwarded to the Director, International Trade Compliance Division, Customs Headquarters, for review and decision.

C. *Decisions of the Assistant Commissioner, Office of Regulations and Rulings.* Supplemental petitions filed on cases where the original decision was made by the Assistant Commissioner, Office of Regulations and Rulings, Customs Headquarters, or his delegate, will be retained by the Assistant Commissioner, Office of Regulations and Rulings, for review and decision, and will not be delegated.

D. *Decisions of Treasury Department.* Supplemental petitions filed on cases where the original decision was made in the Treasury Department will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, where decisions on the supplemental petitions will be prepared for the Treasury Department for review and approval.

III. Authority of the Assistant Commissioner, Office of Regulations and Rulings

All authority delegated to Headquarters personnel set forth in this document is also vested in the Assistant Commissioner, Office of Regulations and Rulings, Customs Headquarters.

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 25, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–22347 Filed 9–1–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 29, 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, DC 20552.

DATES: Submit written comments on or before October 5, 2000.

OMB Number: 1550–0084.

Form Number: OTS Forms 1586–A, 1586–I.

Type of Review: Revision of a currently approved collection.

Title: Interest Rate Risk Appeals.

Description: The OTS determines the interest rate risk component for savings associations based on information submitted as part of the Thrift Financial Report, OMB Control No. 1550–0023. The final interest rate risk regulation published on August 13, 1993 contained a provision for an appeal of this component. This information collection specifies the information necessary for the savings association's appeal.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Responses: 11 responses.

Estimated Burden Hours Per Response: 16 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 170 hours.

Clearance Officer: Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

John E. Werner,

Director, Information and Management Services.

[FR Doc. 00–22637 Filed 9–1–00; 8:45 am]

BILLING CODE 6720–01–P

INSTITUTE OF PEACE

Announcement of the 2001 Solicited Grant Topics

AGENCY: Institute of Peace.

ACTION: Notice.

SUMMARY: The agency is soliciting applications for its 2001 Solicited Grant Competition. The 2001 themes/topics are:

- Solicitation A: Post-Conflict Peacebuilding.
- Solicitation B: Asia-Pacific.
- Solicitation C: The Balkans.
- Solicitation D: Training.

DATES: Application material available upon request. Receipt date for solicited grant applications: December 29, 2000. Notification of awards: April 2000.

ADDRESSES: For Application Package: United States Institute of Peace, Grant Program—Solicited Grants, 1200 17th Street, NW, Ste. 200, Washington, DC 20036–3011. (202) 429–6063 (fax)—(202 429–1719 (TTY), e-mail: grant_program@usip.org.

FOR FURTHER INFORMATION CONTACT: The Grant Program; phone (202)–429–3842.

Dated: August 29, 2000.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 00–22643 Filed 9–1–00; 8:45 am]

BILLING CODE 3155–01–M

Federal Register

Tuesday,
September 5, 2000

Part II

Department of Education

34 CFR Part 303

Early Intervention Program for Infants and Toddlers With Disabilities; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820–AB53

Early Intervention Program for Infants and Toddlers With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Early Intervention Program for Infants and Toddlers With Disabilities under Part C of the Individuals with Disabilities Education Act (IDEA). These amendments are needed to provide clarification and guidance regarding the provision of early intervention services in "natural environments;" to revise the provisions on State financing of early intervention services (including adding provisions to address the use of public and private insurance by States); and to make other changes designed to improve the understanding and implementation of the regulations under this part.

DATES: We must receive your comments on or before December 4, 2000.

ADDRESSES: Address all comments about these proposed regulations to Thomas B. Irvin, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3090, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202–2570.

If you prefer to send your comments through the Internet, use the following address: Comments@ed.gov

You must use the term "IDEA—Part C regulations" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Thomas B. Irvin (202) 205–5507. If you use a telecommunication device for the deaf (TDD), you may call the TDD number at (202) 205–5465.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments and recommendations regarding the specific provisions in this notice of proposed rulemaking (NPRM) to which we are proposing to make changes to the existing regulations for part 303, including proposed changes relating to:

(1) Natural environments (*i.e.*, proposed § 303.341, and changes to §§ 303.12(b), 303.18, 303.167(c); and 303.344(d), and other changes identified in the discussion of changes on natural environments later in this preamble);

(2) State financing of early intervention services and the use of insurance (*i.e.*, proposed § 303.519, and changes to §§ 303.520 and 303.521); and

(3) Other areas, including—

- The provisions on service coordination (*i.e.*, §§ 303.12(d)(11), 303.23, and a new 303.302);
- The two-day timeline provision in the child find requirements (*i.e.*, § 303.321(d)(2)(ii));
- Individualized family service plans (IFSPs), to—(1) include under proposed § 303.342(a)(2), a provision on special considerations (similar to the Part B requirement in 34 CFR 300.346(a)(2)); and (2) to further clarify (under 303.343(a)(2)) how evaluation results will be interpreted at an IFSP meeting if the person or persons conducting the evaluations and assessments is unable to be present at the meeting;
- The "pendency" provision under § 303.425, to clarify that the provision does not apply if a child is transitioning from Part C services to preschool or other services; and
- Transition to preschool or other appropriate services under §§ 303.148 and 303.344(h), to make clarifying changes regarding those provisions.

A description of each of these changes and other proposed substantive changes is included later in this preamble. In addition, "Attachment 1" to this NPRM includes a consolidated list, by subpart and section, of the proposed revisions to be made to the existing regulations, except for minor technical changes (*e.g.*, correcting typos, making simple word changes, and other similar changes).

The majority of the requirements in part 303 (nearly two-thirds of all sections in the existing regulations) are not being revised by this NPRM, and would remain unchanged at the end of this rulemaking process. However, although we are proposing to amend a relatively small number of requirements in these regulations, we are sensitive to the difficulties readers face if the NPRM shows only the amended language and not the entire regulation. Thus, to accommodate readers in understanding these proposed changes, we have elected to publish the full text of the regulations, as it would be if amended, rather than simply publishing an amendatory document that shows only the proposed changes. While this approach increases the length of this NPRM, it provides a more meaningful way for parents, public agencies, service providers, and the general public to review the changes within the context of the existing regulations.

In providing this accommodation, however, we are asking that comments submitted on this NPRM be limited only to the provisions in the existing regulations to which we are proposing to make substantive changes, including the provisions identified earlier in this preamble.

To ensure that comments have the maximum effect in developing the final regulations, we encourage you to identify clearly the specific subpart, section, and paragraph of the proposed regulations that each comment addresses, and to arrange the comments in the same order that the proposed changes appear in the text of this NPRM.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulatory changes. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program. Again, however, please limit your comments to the changes we have proposed to the existing regulations.

During and after the comment period, you may inspect all public comments about this proposed regulation in Room 3090, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed regulation. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

On April 14, 1998, the Secretary published in the **Federal Register** (63 FR 18290) final regulations governing "Part H" of the IDEA, the Early Intervention Program for Infants and Toddlers with Disabilities (34 CFR part 303). Those final regulations revised

part 303 to incorporate the statutory amendments to Part H that were added by the IDEA Amendments of 1997, including new provisions relating to mediation, natural environments, payor of last resort, personnel standards, and State interagency coordinating councils. These regulations became effective on July 1, 1998, and at that time the Part H program was renamed "Part C," consistent with the IDEA Amendments of 1997.

On March 12, 1999, with the publication of final regulations for Part B of IDEA (34 CFR part 300), the regulations under part 303 were further revised to make conforming amendments to the definition of "parent" in § 303.19, the State complaint procedures in §§ 303.510–303.512, and the use of proceeds from public or private insurance in § 303.520(d).

Except for those technical and conforming amendments made to part 303 in 1998 and 1999, these regulations have not been amended since 1993, when they were revised to implement the IDEA Amendments of 1991 (Pub. L. 102–119) and make certain other changes. Moreover, many provisions in part 303 have remained in effect since the initial regulations for the "Part H program" were published in 1989.

In many respects, the regulations for the Part C program have provided, over an extended period of time, an effective blueprint for States to follow in developing and maintaining a statewide system of early intervention services for infants and toddlers with disabilities and their families. However, based on the Department's experience in administering the Part C program, especially in recent years, it has become clear that changes are needed in certain key requirements in part 303, as described earlier in this preamble under the "Invitation to Comment."

The need for making the proposed changes in this NPRM has become increasingly apparent in recent years, based on (1) the kinds of questions we have received from parents and public agency staff about problems they are facing with the Part C program; (2) the policy guidance we have provided to States; and (3) the findings we have made in monitoring State implementation of the Part C program.

In addition, as a follow-up to the Department's recognized need to amend selected provisions in the existing regulations for part 303, the Secretary published (in the same April 14, 1998 issue of the **Federal Register** (63 FR 18297) described earlier in this preamble) a notice soliciting advice and recommendations from the public as to whether additional revisions are needed to implement the requirements added by the IDEA Amendments of 1997, and on whether to develop new regulations in areas that were not affected by the statutory amendments. On August 14, 1998, the Secretary published another notice in the **Federal Register**, extending the period for submitting comments until the 30th day following publication of the final regulations for Part B of IDEA (*i.e.*, April 12, 1999).

By the end of the comment period, 328 comments were received in response to the **Federal Register** notices, including letters from parents and grandparents, several State lead agencies and interagency coordinating councils, early intervention service providers, and parent-advocate and professional associations.

The comments addressed a wide range of provisions in the current regulations, but focused mainly on natural environments; finance issues, resources, and insurance; individualized family service plans (IFSPs); personnel standards; procedural safeguards; and transition to preschool programs.

The comments submitted in response to the two **Federal Register** notices were carefully reviewed and considered in developing this NPRM. We appreciate the thoughtful attention of the commenters in responding to these notices.

Taken as a whole, the comments validated the need for the Department to publish a notice of proposed rulemaking (NPRM) on selected provisions in the Part C regulations.

The following describes the proposed changes to the regulations on natural environments, followed by a description of other proposed regulatory changes by subpart and section, including proposed changes regarding the financing of early intervention services, described under §§ 303.519–303.521 of Subpart F.

Natural Environments

We are proposing to make clarifying changes to the provisions on "natural environments" in the existing regulations, in order to more accurately reflect the Department's long-standing policy interpretation regarding these provisions, and to provide more definitive guidance on their implementation than is included in the current regulations.

The provisions on natural environments are included in four sections of the current regulations, as follows: First, in the definition of early intervention services under § 303.12(b), which states that, to the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. Second, a definition of "natural environments" is included in § 303.18 (*i.e.*, the term "means settings that are natural or normal for the child's age peers who have no disabilities").

Third, the State application requirements on IFSPs in § 303.167 of the current regulations include, under paragraph (c) of that section, a statutory provision that requires policies and procedures on natural environments. Finally, the "Content of IFSP" requirements in § 303.344 require, under paragraph (d) of that section, that the IFSP include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family, including—"(iii) The natural environments, as described in §§ 303.12(b) and 303.18, in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment."

Based on the public comments we received about natural environments, as well as other concerns and questions raised with the Department in recent years, it is clear that there is some misunderstanding about the meaning of "natural environments," and how those provisions are to be implemented.

The changes that we are proposing to make to the natural environment provisions do not impose major new substantive requirements. Instead, in contrast to the current regulations, they focus more fully on a basic theme inherent in the Part C program—the individualization of decisions, through the IFSP process, in determining—(1) what specific early intervention services a child needs, and (2) the setting or settings in which those services will be provided. Virtually all major changes on natural environments that are proposed in this NPRM are directed at giving greater emphasis to that theme than the current regulations reflect.

The concept of individualization through the IFSP process is consistent with the Part C regulatory history on natural environments. For example, the concept was addressed in the "Analysis of Comments and Changes" in the 1993 final Part H regulations, in which commenters had requested clarification and examples of when a child must be served in a natural environment. The response to those comments is included in the following paragraph:

Discussion: The Secretary believes that no further guidance is appropriate at this time. Decisions on the early intervention services to a child and his or her family, including decisions on the location of service delivery, are made in the development of the individualized family service plan described in §§ 303.340–303.346. The Secretary contemplates that the range of available options will be reviewed at the IFSP meeting described in § 303.342, in which the parents are full participants. With respect to the comment on center-based services, the Secretary emphasizes that decisions on the location of service delivery must be made on an individualized basis in accordance with the needs of the child and the family. See § 303.344(d). (58 FR 40982, July 30, 1993).

The basic thrust of the natural environments provisions in the statute and regulations is that, to the maximum extent appropriate, early intervention services are provided in the home of each eligible child, or in community settings in which children without disabilities participate. The basic principle underlying this requirement is that being in integrated settings with their nondisabled peers will enhance the development of eligible children under this part. It also prepares the child and family, if the child is "Part B—eligible," for the experience of receiving services in the least restrictive environment. For a child who is not eligible for Part B services and may automatically be integrated in school and in life with nondisabled peers, the child and family would likewise be prepared. Thus, this provision ensures that eligible children under this part will be in community settings with their nondisabled peers—including receiving early intervention services in those settings—to the extent appropriate.

However, the IDEA Amendments of 1997 added the following new provisions, which make it clear that exceptions are anticipated, and that the provision of services in settings other than natural environments may be necessary under certain conditions:

- Section 635(a)(16)(B) requires each State to have policies and procedures to ensure that—"The provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment *only if early intervention cannot be achieved satisfactorily* for the infant or toddler in a natural environment;" (Emphasis added).
- Section 635(d)(5) provides that the IFSP must include a statement of "The natural environments * * * in which early intervention services will be provided, *and a justification of the extent, if any, to which the services will not be provided in a natural environment.*" (Emphasis added)

Thus, while "natural environments" are the legally preferred settings for providing early intervention services, it would be appropriate, under Part C of the Act and these regulations, for a given child to receive one or more of the early intervention services in another setting, if the child's IFSP team, after reviewing the relevant information about the child, makes that determination.

Proposed Changes to Natural Environments Provisions

The following are changes that we are proposing to make to the natural environments provisions in the current regulations:

We are proposing to amend the definition of "natural environments" in § 303.18, by—(1) making technical changes, including designating the current definition as § 303.18(a), and (2) incorporating, as new § 303.18(b), the substance of the provision on natural environments from § 303.12(b) of the existing regulations. This proposed change would include, in one place, the full text of the definition of "natural environments" rather than having the provisions divided among two separate sections under Subpart A of the current regulations (*i.e.*, §§ 303.12(b) and 303.18).

In addition, consistent with the Part C theme of individualized decisions by IFSP teams, we are proposing to amend the corresponding regulations on natural environments to include, under the IFSP requirements in Subpart D, all substantive provisions related to natural environments—first, by revising the definition of "IFSP" in proposed § 303.340(a), to affirmatively state that each child's IFSP is developed by the IFSP team; second, by placing all substantive "process" requirements regarding natural environments in a new § 303.341 ("Policies and procedures on natural environments"), including the State application requirements from § 303.167(c); and third, by revising the "Content of IFSP" requirements in § 303.344, to make clarifying and technical changes on natural environments.

The revised definition of "IFSP" in § 303.340(a) makes it clear that, among its various duties and responsibilities, the IFSP team is directly responsible for—(1) determining the specific early intervention services necessary to meet the unique needs of the child and the family, consistent with § 303.344(d)(1); and (2) implementing the provisions on natural environments in § 303.344(d)(3), including determining the specific locations or settings where each service will be provided.

Section 303.167(c) (which contains the State application requirement on natural environments from section 635(a)(16) of the Act) would be amended by—(1) moving the substance of that requirement to a new § 303.341(a); and (2) revising the language in § 303.167(c) to clarify that each application must include "Policies and procedures on natural environments that meet the requirements of §§ 303.341 and 303.344(d)(3)."

These proposed changes to the IFSP definition, together with the new provisions in proposed § 303.341, highlight the crucial role that the IFSP team (including the parents) plays in implementing the natural environments provisions, but does so without imposing any additional burden on IFSP teams. However, these changes would address a problem that the Department has found in monitoring States' implementation of the Part C program. In some States, the decisions as to the settings for providing services either (1) have been made without the benefit of the full IFSP team's involvement; or (2) have been dictated by external circumstances, such as funding sources or personnel, without regard to the needs of the particular child.

Proposed § 303.341(a) would incorporate the substance of § 303.167(c) (described earlier), and would be amended to clarify the role of the IFSP team. It is the IFSP team that determines whether early intervention can be achieved satisfactorily in a natural environment, based on the evaluation and assessment required in § 303.322 and the information required in § 303.344(a)–(c) (*i.e.*, the child's present status, the family information, and the desired outcomes).

A new § 303.341(b) would be added to clarify that the policies and procedures described in paragraph (a) of this section must ensure that—(1) the IFSP team determines, for each service to be provided, whether the child's needs can be met in a natural environment; and (2) if the team determines that a specific service for the child must be provided in a different setting (for example, in a center-based program that serves children with disabilities, or another setting appropriate to the age and needs of the child), a justification is included in the child's IFSP.

Proposed § 303.341(b) also would not add any new burden. However, it would emphasize that the IFSP team's decisions on settings are separate for each service to be provided. While some services for a given child may be appropriately provided in the child's home, other services may be more

appropriate in a group setting (*e.g.*, if a service is designed to meet a socialization goal, the team may choose a child care, day care, or playgroup setting). In addition, this provision would emphasize that the order of decision-making is, first, to determine, for each service in the child's IFSP, if the needs of the child can be met in a natural environment; and, then, only if the team determines that, for a given service, the child's needs cannot be met in a natural environment would other settings be considered.

A provision requiring that the IFSP include a justification of the extent, if any, to which early intervention services will not be provided in a natural environment is set out in the "Content of IFSP" requirements in § 303.344; and the procedures that the IFSP team follows in implementing that provision are contained in § 303.341(c). These provisions are described in the following paragraphs.

The provisions on natural environments and location of services in existing § 303.344(d)(1) would be amended, first, by moving those provisions, in modified form, to a new § 303.344(d)(3), entitled "Natural environments—location of services," and deleting existing paragraphs (d)(1)(ii) and (d)(1)(iii); and, second, by revising new § 303.344(d)(3) to—(1) add a reference to the "process" requirements on natural environments in § 303.341; and (2) clarify that the decision on natural environments, and any justification needed, is made separately for each service to be provided to the child.

Proposed § 303.341(c) would provide that the justification required in § 303.341(b) (and in § 303.344(d)(3)(ii)) must—(1) include a statement describing the basis of the IFSP team's decision to provide a specific early intervention service for the child in a setting other than a natural environment; (2) be based on the identified needs of the child, and the projected outcomes, as determined by the evaluation and assessment required in § 303.322 and the information required in § 303.344(a) through (c); and (3) if appropriate, be based on the nature of the service required to meet the unique needs of the child.

From the comments and questions we have received, it appears that "natural environments" is being interpreted by some to mean that, without exception, early intervention services must be provided only in the child's home, or in a community setting in which children without disabilities participate. Clearly, this limitation is not intended under either the statute or these regulations.

The statutory requirement that the IFSP include a justification of the extent, if any, to which a child will not receive services in a natural environment is a safeguard to ensure that the IFSP team, including the parent, has concluded—only after carefully reviewing all relevant information about the child—that one or more of the services in the child's IFSP must be provided in a setting other than a natural environment. The justification, itself, does not have to be long or burdensome; it could include a simple statement, based on the IFSP team's discussion and conclusions, that describes why the team determined that a particular service for the child needs to be provided in a different setting.

It is important, however, that the conclusions of the IFSP team, as well as the justification, be based on the needs of the child, and not for other reasons such as administrative convenience, or the State's fiscal or personnel limitations.

The provision in proposed § 303.341(c)(3) that concerns the "nature of the service" to meet the unique needs of the child to support a justification, is meant to address the unique types of services for certain types of disabilities that must be provided in a specialized setting to be effective. For example, some auditory services for deaf children need to be provided in a quiet, controlled setting without noise distractions; and services for medically fragile children may need to be provided in a sterile environment. However, it is expected that this justification would be used only in those extraordinary circumstances in which the child's unique needs and the unique nature of the service require the service to be provided in a specialized setting. Thus, as stated in the preceding paragraph, the use of this justification would not be acceptable for any of the reasons described earlier, such as administrative convenience, funding, or personnel limitations.

Some commenters expressed concern about losing the parent-to-parent interactions in early intervention centers. Parent networking, support, and training, however, are important family needs that should be addressed by the IFSP team as part of developing a child's IFSP. The identification of parent support, training, or counseling, as a needed early intervention service, may be provided directly through Part C, or by referral to an organization that offers these services (*e.g.*, a Parent Training and Information Center, a Parent-to-Parent program, or other family support organizations). The settings in which these meetings or training sessions will take place should be part of the overall discussion in the development of the IFSP.

Many early intervention centers that once served only children with disabilities have expanded to serve nondisabled children. Thus, many opportunities exist for parents of children with disabilities to interact; and a parent's need for time with other parents of children with disabilities may be successfully accommodated in either the natural environments where the child receives services, or in other settings.

However, the parent's need cannot be used as a justification for not providing services to the child in a natural environment. With respect to requiring a justification of the extent, if any, to which the services will not be provided in a natural environment, the focus of that requirement is on the child. Thus, any justification for the child's services to take place in a setting other than a natural environment must relate to the child's individual needs.

In fact, the settings for parent support, training, and counseling are not affected by the natural environments provisions. This matter is addressed in proposed § 303.341(d), which would provide that the provisions on natural environments in this part do not apply to services in the IFSP that are intended to meet the needs of the parents or other family members and not the needs of the child (*e.g.*, participation of a parent in a parent-support program). However, if a specific service listed in the IFSP is intended to help the parent to enhance the development of the child (*e.g.*, to train the parent to work directly with the child in implementing an exercise recommended by a physical therapist), the service must be provided in a natural environment, to the maximum extent appropriate; and the natural environments provisions would apply.

The definition of "location" in § 303.344(d)(3) (and the separate provision on "[t]he location of the services," previously described under § 303.344(d)(1)(iii)) would be deleted. These provisions are no longer needed, based on the evolution of the natural environment provisions since the original Part H regulations were published in 1989.

Other Proposed Regulatory Changes

As previously indicated, in addition to the provisions on natural environments and the proposed changes to the provisions on "Policies and Procedures Related to Financial Matters" (see description of proposed § 303.519, and proposed changes to §§ 303.520–303.521), we are proposing

to make changes to certain other requirements in the existing regulations, including updating and clarifying those requirements, and to make other technical and organizational changes designed to improve the understanding and implementation of the regulations for the Part C program.

We also are proposing to address the disposition of some of the explanatory notes that follow selected sections of the current regulations, as follows:

First, in a few instances, we are proposing to incorporate into the text of the regulations the nonregulatory guidance contained in certain selected notes, including the substance of the notes following §§ 303.23 (Service coordination; redesignated as proposed § 303.302); 300.123 (Prohibition against commingling); 303.301 (Central directory); and 303.361 (Personnel standards).

Second, we are proposing to amend the note preceding § 303.6, to delete "location" from the list of terms defined in this part (described earlier in this preamble). We also are proposing to amend the note following § 303.12 (Early intervention services) to provide additional clarification regarding "qualified personnel" who provide early intervention services.

Third, we are proposing to delete Note 1 following § 303.420 (Due process procedures) because, with the proposed changes made to § 303.420 and other sections under subpart E of these regulations, the note would no longer be relevant. (An explanation of the proposed changes made to the notes in this NPRM is included later in this preamble under the discussion of each specific section.)

With respect to the remaining notes in the current regulations, we are planning to remove those notes from the final regulations, either by—(1) incorporating into the text of the regulations the substance of any note that should be a requirement; (2) adding, as part of the analysis of comments and changes, information from any note that provides clarifying information or useful guidance; or (3) deleting any note that is no longer relevant. Our proposed action with respect to the notes is consistent with the process followed in publishing the final Part B regulations.

We specifically invite public comment on which notes should be—(1) made regulatory; (2) included only as guidance in the preamble to the final regulations, or in the "Analysis of Comments and Changes" included in those regulations; or (3) deleted. In order to assist commenters in this effort, we have included, as "Attachment 2" to this NPRM, a list showing each section of the current regulations that contains a note.

This NPRM includes a number of technical, structural, and organizational changes that are proposed for the purpose of improving the readability and understanding of certain requirements in the regulations under this part. These technical, structural, and organizational changes, which are described in the following paragraphs (along with the proposed substantive revisions), are not intended in any way to change the substance of the requirements.

The following includes, by subpart, section, and paragraph, a description of the proposed changes to the current Part C regulations. (See also Attachment 1 to this NPRM—the "List of Proposed Changes in IDEA—Part C Regulations," described earlier in this preamble.)

Subpart A—General

Section 303.3 (Activities that may be supported under this part) would be amended, first, by making technical changes (*e.g.*, changing the title of the section to "Use of Part C Funds"), and restructuring the section, by redesignating the activities in § 303.3(a)–(e) of the existing regulations as paragraphs (a)(1)–(a)(5)).

Second, § 303.3 would be amended by adding a new paragraph (a)(6), to clarify that funds under this part may be used to assist families to—(1) understand the sources of financing early intervention services, including public and private insurance programs, and how to access those sources; and (2) be knowledgeable about any potential long-term costs involved in accessing those sources, and how to minimize those costs.

It is important that families know how to access funding for early intervention services and of the consequences of using public or private insurance, so that they can make informed decisions about the provision of services for their eligible children under this part. This proposed use of funds would not be mandatory for States.

One way that States may assist families with respect to understanding sources of funding under this provision would be through the service coordinator assigned to each child and the child's family. Therefore, we have proposed a corresponding change in the functions of service coordinators under new § 303.302.

Section 303.3 would be further revised by adding a new paragraph (b)(1), to clarify that "[f]unds under Part C of the Act may not be used to pay costs of a party related to an action or proceeding under section 639 of the Act and subpart E of this part." This provision would prohibit the use of Part C funds for costs of a party in either due process hearings or any resulting court proceedings, and related matters, including costs for depositions, expert witnesses, settlements, and other related costs. For example, under this provision, the lead agency would not be able to use Part C funds to pay for its legal representation in a due process hearing or resulting court proceeding. It is important to include this prohibition, to ensure that the limited Federal resources under Part C are used to provide early intervention services for eligible children under this part and their families, and are not used to promote litigation of disputes.

A new § 303.3(b)(2) would be added to make it clear that the prohibition in paragraph (b)(1) does not preclude a lead agency from using Part C funds for conducting due process hearings under section 639 of the Act (for example, paying a hearing officer, providing a place for conducting a hearing, and paying the cost of providing the parent with a transcription of the hearing). The general rule under § 303.3(b)—that prohibits the use of Part C funds to pay expenses incurred by a party to an action or proceeding, but allows a lead agency, as administrator of the program, to use the funds to make due process hearings available—is consistent with the way it is expressed in the Part B regulations.

Section 303.5 (Applicable regulations) would be amended by updating paragraph (a)(1) of the section to include a reference to other parts of the Education Department General Administrative Regulations (EDGAR) that apply to part 303, including Part 97 (Protection of Human Subjects); Part 98 (Student Rights in Research, Experimental Programs and Testing); and Part 99 (Family Educational Rights and Privacy).

Section 303.5 would be further amended to clarify, in paragraph (a)(3), that the Part B due process hearing procedures in 34 CFR 300.506–300.512 apply to this part if a State lead agency, under § 303.420(a)(1), adopts those procedures. This change would make explicitly applicable the translations from Part B to Part C language in § 303.5(b). In addition, a technical change would be made to § 303.5(a)(3) to change the reference to applicable Part B regulations from §§ 303.580–303.303.585 to §§ 303.580–303.587.

The references in § 303.5(b)(4) would be removed because the provisions cited under that paragraph are not applicable. Paragraph (b)(5) of this section would be redesignated as (b)(4), and the citation would be corrected to read, as follows:

"§ 300.127 (Confidentiality of personally identifiable information)."

Definitions

The note immediately preceding § 303.6 (which includes a list of the terms that are defined in specific subparts and sections of the regulations for part 303) would be amended by deleting the definition of "Location (§ 303.344(d)(3))" from the list (see discussion of natural environments earlier in this preamble).

Section 303.9 (Days) would be amended by changing the title to "Day; business day;" and by clarifying that "business day" would apply only with respect to hearing rights under 34 CFR 300.509, if a State adopts the Part B due process hearing procedures. As used in these proposed regulations and in Part B (34 CFR part 300), "business day" means Monday through Friday, except for Federal and State holidays.

With respect to States that implement the due process hearing procedures under §§ 303.421–303.425 (in lieu of adopting the Part B procedures), we invite comments on whether existing § 303.422(b)(3) (Parent rights in due process hearings) should be amended by replacing "days" with "business days" in the following provision:

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the hearing.

The use of "business days" in this context would in no way reduce a parent's rights under this part, but, instead, would be beneficial because it would enable the parent to have more time in which to review the evidence.

Section 303.12 (Early intervention services) would be amended by—(1) changing the order of the paragraphs in the definition, including the order of specific provisions in paragraph (a), to conform more closely to the statutory definition; (2) moving the list of specific early intervention services from paragraph (d) to paragraph (b); and (3) clarifying, in proposed paragraph (a)(5), that the early intervention services listed in paragraph (b) are subject to the exclusions on health services in § 303.13(c).

Section 303.12(a) would be further amended by—(1) clarifying, in proposed paragraph (a)(6), that early intervention services are provided "in a timely manner" by the qualified personnel listed in paragraph (e) (proposed paragraph (c)); (2) specifying, in proposed paragraph (a)(8), that, to the maximum extent appropriate, the services are provided "in natural environments, as defined in § 303.18;" and (3) making other technical changes.

Finally, § 303.12 would be further revised by (1) moving the substance of paragraph (b) (on "natural environments") to the definition of that term in § 303.18; and (2) making other technical changes.

Section 303.12(d)(1) (proposed § 303.12(b)(1)) (Assistive technology) would be amended by restructuring the introductory paragraph into new paragraph (b)(1)(i) (Assistive technology device) and paragraph (b)(1)(ii) (Assistive technology service). The definition of "assistive technology service" would be revised to clarify that the term means a service "that directly assists an eligible child or the child's parents in the selection, acquisition, or use of an assistive technology device *for the child*." (Emphasis added)

Section 303.12(d)(2) (proposed § 303.12(b)(2))(audiology) would be amended by changing the title to "audiology services," to conform to the statutory term; and by making other changes to conform more closely to the Part B definition (*e.g.*, replacing "auditory impairment" with "hearing loss" each time it appears; deleting the term "at risk criteria and" in paragraph (d)(2)(i); and adding a new paragraph (d)(2)(vii) on "Counseling and guidance of children, parents, and teachers regarding hearing loss").

In response to a suggestion from commenters, § 303.12(d)(3) (proposed § 303.12(b)(3))(Family training, counseling, and home visits) would be amended by adding "special educators" to the types of personnel who may appropriately provide these services. Although the phrase "and other qualified personnel" in the existing definition under § 303.12(d)(3) would encompass special educators as well as other types of early intervention and related services providers, special educators may not ordinarily be considered under this part as having a role in providing family training, counseling, and home visits.

Section 303.12(d)(6) (Nursing services) would be moved from the definition of early intervention services to the definition of "Health services" as a new § 303.13(b)(3), to clarify that nursing services are, in fact, an inherent part of "health services necessary to enable the infant or toddler to benefit from the other early intervention services." (IDEA section 632(4)(E)(x)). Nursing services, like the other health services listed in § 303.13, may be provided through Part C during the time a child is receiving the other early intervention services described in § 303.12, to enable the child to benefit from those services. Because the placement of the definition of nursing services in the existing regulations has caused confusion, this change would clarify the meaning of nursing services under Part C. With the removal of "Nursing services" from the list of early intervention services under proposed § 303,12(b), the remaining services in that list would be renumbered accordingly.

Section 303.12(d)(8) (proposed § 303.12(b)(7)) (Occupational therapy) would be amended by adding language to clarify that the term "(i) Means services provided by a qualified occupational therapist."

Section 303.12(d)(11) ("Service coordination services") would be amended, first, by making technical changes (*e.g.*, changing the title to "Service coordination," and changing the citation to § 303.12(b)(10)); and, second, by deleting the phrase—"that are in addition to the functions and activities included under § 303.23;" and adding language to clarify that "service coordination" is actually comprised of those functions and activities. (See discussion that follows.)

In addition, because the definition of "Service coordination (case management)" in § 303.23 includes mainly long-standing substantive requirements, and is not simply a definition, we are proposing to move the substance of that definition, without change, to a new substantive section of the regulations (§ 303.302 under Subpart D), and to delete § 303.23. This proposed change, together with the proposed revision to § 303.12(d)(11), would—(1) resolve the confusion that has existed with two definitions of service coordination in the regulations (*i.e.*, in §§ 303.12(d)(11) and 303.23), and (2) mean that the only definition of service coordination under this part would be the one in § 303.12(d)(11) (proposed § 303.12(b)(10)). As revised, proposed § 303.12(b)(10) would state that "[s]ervice coordination means assistance and services provided by a service coordinator to a child eligible under this part and the child's family, *in accordance with § 303.302*." (Emphasis added)

Thus, "service coordination" would remain as a listed early intervention service in proposed § 303.12(b)(10). However, as clarified in proposed § 303.302(b)(2), IFSPs are not required to include service coordination as one of the child's early intervention services under § 303.344(d)(1), because service coordination—(1) is a basic entitlement of every eligible child under this part, and (2) is an on-going, coordinative process that is designed to facilitate and

enhance the delivery of early intervention services. On the other hand, IFSPs must include the name of the service coordinator, as currently required in § 303.344(g) (proposed § 303.344(h)).

Because of the crucial role that service coordinators play in facilitating the evaluation of an eligible child under this part, and in the development and implementation of the child's IFSP, it is appropriate that the functions and activities of the service coordinator be moved to proposed § 303.302, so that they are closely linked to the child-centered requirements in Subpart D. A technical change would be made in the introduction to proposed new § 303.302 to make it clear that "service coordination (case management)" is a substantive requirement and not a definition.

Section 303.12(d)(13) (proposed § 303.12(b)(12)) (Special instruction) would be amended by deleting, in paragraph (d)(13)(i), the phrase "in a variety of developmental areas, including cognitive processes and social interaction," and replacing it with "in the following developmental areas: cognitive; physical; communication; social or emotional; and adaptive." This proposed change more closely tracks the developmental areas described in the statute and in §§ 303.16 and 303.300.

The definition of "special instruction" would be further amended by revising paragraph (d)(13)(ii) to read as follows:

> Planning that lead to achieving the outcomes in the child's IFSP, including curriculum planning, the planned interaction of personnel, and planning with respect to the appropriate use of time, space, and materials.

This change would more accurately reflect "special instruction" as an early intervention service, and would improve the readability and understanding of the definition.

Section 303.12(d)(14) (proposed § 303.12(b)(13)) (Speech-language pathology) would be amended by—(1) adding "services" to the title, to conform to the statutory term; (2) replacing "oropharyngeal" with "swallowing" each place it appears, to more accurately and clearly describe the term used by speech-language pathologists; and (3) adding a new paragraph (b)(13)(iv), related to "Counseling and guidance of parents, children, and teachers regarding speech and language impairments," to conform to the Part B definition.

The note following § 303.12 would be revised by adding language to clarify that "qualified personnel" who provide early intervention services also may include augmentative communication specialists, and technology specialists.

Section 303.13 (Health services) would be amended by revising paragraph (b), to clarify that the covered health services under that paragraph (*e.g.*, clean intermittent catherization and other health services listed in paragraph (b)(1), and consultation by physicians, described in paragraph (b)(2)) are subject to the limitations included under paragraph (c) (related to surgical procedures and other medical-health services and devices that are not included under "health services"). Section 303.13(b) would be further revised by adding, as a new paragraph (b)(3), the definition of "nursing services" previously included under "early intervention services" (discussed earlier in this preamble under § 303.12(d)(6).)

In addition, § 303.13(c) would be amended by including additional examples of services and devices that are not covered under "health services," as follows: (1) services that are surgical in nature (*i.e.*, the installation of devices such as pacemakers, cochlear implants, or prostheses); and (2) devices necessary to control or treat a medical or other condition (*e.g.*, pacemakers, cochlear implants, prostheses, or shunts).

Section 303.14 (IFSP) would be amended by—(1) changing the title to "IFSP; IFSP team;" (2) designating the existing definition as paragraph (a); and (3) adding a new paragraph (b) to specify that the term "IFSP team means the group of participants described in § 303.343 that is responsible for developing, reviewing, and, if appropriate, revising an IFSP for an eligible child under this part." Although parents, public agencies, and service providers have traditionally used "IFSP team" when referring to the "Participants in IFSP meetings" in § 303.343, the term has never been included in the Part C regulations. We believe that using the term in the text of the regulations when describing the "IFSP team's" role in implementing specific Part C requirements improves the clarity and readability of the regulations.

Section 303.18 (definition of "natural environments") would be revised by incorporating into that definition the substance of the provision on natural environments from § 303.12(b) of the existing regulation (discussed earlier in this preamble).

Section 303.19 (Parent) would be amended by making a technical and conforming change to the definition (*i.e.*, by adding, after "A guardian" in paragraph (a)(2), the phrase ", but not the State if the child is a ward of the State."). This phrase, which would conform the definition of "parent" to the Part B definition, was inadvertently omitted in the March 12, 1999 final regulations for Part C of IDEA (see 64 FR 12535).

Section 303.20 (Policies) would be amended by revising paragraph (b)(3), due to the proposed changes to the sections on State finance and systems of payments, to clarify that State policies include policies concerning the State's system of payments, if any, and the State's financing of early intervention services, in accordance with §§ 303.519–303.521.

Section 303.22 (Qualified) would be amended by changing the title of the section to read "Qualified personnel," and amending the definition to conform to the definition of that term in the Part B regulations (34 CFR 300.23).

Section 303.23 (Service coordination (case management)) would be deleted, and the substance of the definition would be moved to a new § 303.302 (see earlier discussion under § 303.12(d)(13)). The remaining sections in Subpart A would be renumbered accordingly.

Subpart B—State Application for a Grant

General Requirements

Section 303.100 (Conditions of assistance) would be amended by (1) making technical changes designed to improve the readability of the section, including adding headings to each paragraph in the section; and (2) adding a new paragraph (a)(1)(ii)(B), to clarify that the information in a State's approved application that is on file with the Secretary must contain "Copies of all applicable State statutes, regulations, and other State documents that show the basis of that information." This is consistent with the Part B requirements in § 300.110(b)(2) and with Part C policy.

Statement of Assurances

Section 303.123 (Prohibition against commingling) would be amended by deleting the note following that section, and incorporating the substance of the note into the text of the regulations. This change would strengthen and give more explicit meaning to the "non-commingling" requirement.

Section 303.124 would be revised by adding a new paragraph (c). This provision would codify existing Department policy interpreting the test in § 303.124(b) regarding the supplement-not-supplant provision. Under paragraph (b), a State must

"budget," for early intervention services, at least the same amount of State funds that it spent the previous year. This is part of an application requirement, and the Department examines, as part of its application review, whether the State plans to spend the same amount that it did the previous year, on early intervention services. Paragraph (c) would clarify that, if a State does not, in fact, spend the amount it had spent in the previous year, a violation of § 303.124 occurs, unless one of the exceptions in paragraph (b) applies.

We invite comment on whether the Department should broaden the existing exception to the nonsupplanting requirement in § 303.124(b)(2)(ii) concerning the uses of funds for which allowance may be made, in order to enable States to use funds to carry out other purposes in the Part C system beyond the construction or equipment currently covered.

General Requirements for a State Application

Section 303.140 (General) would be amended by deleting, in paragraph (a), the phrase "in this part," and replacing it with "in § 303.160" (*i.e.*, "The statewide system of early intervention services described in § 303.160 is in effect."). This change would more explicitly describe what a State must do to meet the application requirements in Subpart B.

Section 303.148 (Transition to preschool programs) would be amended, first, by changing the title of the section to "Transition to preschool or other appropriate services," and making other similar changes to clarify that some children who receive early intervention services under this part may not receive preschool services under Part B of the IDEA; and second, by restructuring the section for clarity, accuracy, and completeness, including adding, in proposed § 303.148(c), provisions from § 303.344(h) that require parental consent for the transfer of records for the purpose of a child's transition to preschool or other services.

These proposed changes to § 303.148 (as described in the following paragraphs) have consolidated in one section all process requirements regarding the transition of a child from the early intervention program under this part to preschool or other appropriate services. This restructuring of the requirements on transition should be helpful to parents and public agency staff in understanding the requirements, and should facilitate implementation of the provisions.

The introductory paragraph in the existing § 303.148 would be designated as paragraph (a) (General), and would be amended to clarify that the description of policies and procedures to be used to ensure a smooth transition must meet specified requirements in proposed paragraphs (b) through (f) of this section.

The substance of existing paragraphs (a) and (b)(1) would be incorporated, with minor clarifying changes, into a new paragraph (b), entitled "Family involvement; notification of local educational agency." This new paragraph would require that a State's application describe (1) how the families of children served under this part will be included in transition plans for the children, and (2) how the lead agency will notify the LEA for the area in which an eligible child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law.

A proposed new paragraph (c) (Transmittal of records; parental consent) would be added, by (1) requiring that the State's application under this part include a description of the policies and procedures to be used for transmitting records about a child to an LEA, or any other agency, for the purposes of facilitating the child's transition to preschool or other services, and ensuring continuity of services for the child; and (2) incorporating, with certain clarifications, the provision from the IFSP requirements in § 344(h)(2)(iii) regarding the transmission of information about a child, with parental consent, to an LEA to support the child's transition.

A new § 303.182(c)(2) would be added to clarify that such consent is not required before submitting to an LEA directory information about a child (*e.g.*, the child's name, address, telephone number, and age), if the information is provided for the specific purpose of assisting the LEA to implement the Part B child find requirements under 34 CFR 300.125. This reflects existing Department policy—that consent is not required if the transmittal is for child find purposes.

The requirement in § 303.148(a) and (c) for "a description" of the policies and procedures on transition to preschool or other programs would be satisfied by submitting the actual policies and procedures. (In any event, submission of the actual documents is required under proposed § 303.100((a)(1)(ii)(B).)

Proposed § 303.148(c)(1) and (c)(2)(i) use the term "records" in this requirement. However, proposed paragraph (c)(2)(ii) clarifies that the "records" required in this section include any personally identifiable information about the child, including evaluation and assessment information required in § 303.322, and copies of IFSPs that have been developed and implemented in accordance with §§ 303.340–303.346. It is important for this requirement to be as comprehensive as possible with respect to the transfer of information about a child from the lead agency to the LEA or other affected agencies, so that there is no misinterpretation of what must be transmitted, and where consent would be required.

The substance of existing paragraphs (b)(2)(i) and (ii) would be incorporated, essentially unchanged, under a new § 303.148(d), entitled "Conference to discuss services."

Proposed paragraph (d)(1) would describe the procedures for the lead agency to follow to convene a conference for the purpose of planning for preschool services for a child eligible under this part, and paragraph (d)(2) would describe the steps to be followed for a child who may not be eligible for preschool services under Part B of the Act.

Existing § 303.148(b)(3) and (4) would be incorporated, essentially unchanged, under proposed paragraph (e), entitled "Program options; transition plan."

Existing § 303.148(c) would be redesignated as new § 303.148(f) ("Interagency agreement"), and the substance of the provision would be incorporated, with clarifying changes, into the new paragraph. As in the existing regulations, this provision makes it clear that if the State educational agency (SEA) and the lead agency under this part are not the same, the policies and procedures required under § 303.148(a) must provide for the establishment of an interagency agreement between the lead agency and the SEA, to ensure appropriate coordination on transition matters.

Section 303.167 (Individualized family service plans) would be amended by—(1) moving the substance of paragraph (c) (on natural environments) to a new § 303.341(a), and (2) revising the language to clarify that each application must include "Policies and procedures on natural environments that meet the requirements of §§ 303.341 and 303.344(d)(3)." (See discussion on natural environments included earlier in this preamble.)

Section 303.173 (Policies and procedures related to financial matters) would be amended by clarifying, in paragraph (b), the kinds of information about funding resources required in

§ 303.522 that must be included in each application (*i.e.*, (1) the name of each State agency that provides early intervention services. or funding, for children eligible under Part C, even if the agency does not receive Part C funds; (2) the specific funds used by the agency for early intervention services, such as State Medicaid or State special education funds; and (3) the intended use of those funds). These proposed changes are intended to strengthen the regulatory requirements on interagency cooperation (see discussion under § 303.523 in this preamble).

Subpart D—Program and Service Components of a Statewide System of Early Intervention Services

Section 303.300 (State eligibility criteria and procedures) would be amended, as follows: first, by making technical changes, *e.g.*, (1) changing the title of the section to "Child eligibility—criteria and procedures;" (2) making other technical changes to improve the readability of the section, including adding paragraph headings (*e.g.*, "General," "State definition of developmental delay," "Diagnosed condition," and "Children who are at risk"); and (3) clarifying, in a new paragraph (a)(1)(ii), that the State's eligibility criteria must meet the requirements in paragraphs (b)–(d) of § 303.300.

Second, § 303.300 would be further revised by adding a new paragraph (a)(2) to clarify that the State's criteria and procedures related to child eligibility must be on file in the State, and be available for public review.

Section 303.301 (Central directory) would be amended by (1) adding, as a parenthetical statement in paragraph (a)(3), the substance of the note following the section (regarding examples of professional and other groups), and (2) deleting the note.

A new § 303.302, entitled "Service coordination" would be added that would incorporate the substance of the definition of "Service coordination (case management)" from § 303.23 (described earlier in this preamble under § 303.12(d)(11)). Although the title of current § 303.23 includes the parenthetical term "(case management)," we are proposing to omit that term from the title of proposed § 303.302 because it is no longer relevant under this part. The term "case management" was used in the original "Part H" statute and regulations. However, the term was replaced with "service coordination" by the IDEA Amendments of 1991 (Pub. L. 102–119). When the regulations implementing Pub. L. 102–119 were published in 1993, we included the parenthetical term "case management" as a transitional term, and to ensure that the change to "service coordination" would not affect services provided under Medicaid. However, at this point in implementing Part C, it is no longer necessary to make any reference to "case management." The Senate Report on Pub. L. 102–119 stated that the term "service coordination" had been adopted in lieu of "case management," and added—

> The committee decided to change the references in other sections in the legislation because it agrees with parents that they are not cases and do not need to be managed. The intent of this provision is not to change the policy set out in the current definition of "case management" in the regulations and not to affect in any way the authority to seek reimbursement for services provided under Medicaid or any other legislation that makes reference to "case management" services. (S. Rep. No. 102–84, p. 19 (1991))

Proposed § 303.302 also would include, as a new § 303.302(a)(2), the substance of the note following § 303.23, to clarify that—(1) if a State has an existing service coordination system, the State may use or adapt that system, so long as it is consistent with the requirements of this part; and (2) a public agency's use of the term service coordination is not intended to affect the agency's authority to seek reimbursement for services provided under Medicaid or any other legislation that makes reference to case management services. (The note following § 303.23 would be deleted.)

Proposed § 303.302(d)(8) would include a new function for service coordinators that involves assisting families in—(1) understanding the sources of financing early intervention services and how to access those sources, and (2) being knowledgeable about any potential long-term costs to families in accessing those sources. This provision, which is similar to the proposed provision under § 303.3(a)(6), is important because, as previously stated, families need to know how to access funding for early intervention services, and of the consequences of using public or private insurance, so that they can make informed decisions about the provision of services for their eligible children under this part. (Similar language is also included in current Note 3 following § 303.344.)

We have included language in proposed § 303.302(d)(8) to clarify that States have the discretion of deciding if this new service coordination function is one that must be carried out. We invite comments on whether this proposed function should be required or left to the discretion of each State.

Identification and Evaluation

Section 303.320 (Public awareness) would be amended by making technical changes to improve the clarity and readability of the section, and to more closely track the statutory language.

Section 303.321 (Comprehensive child find system) would be amended by revising paragraph (b), first, to rename the paragraph "Policies and procedures;" and, second, to clarify in paragraph (b)(1), that the requirement to ensure that all infants and toddlers who are eligible for services under this part are identified, located, and evaluated includes "(i) traditionally underserved groups, including minority, low-income, inner-city, and rural families; and (ii) highly mobile groups (such as migrant and homeless families)."

Section 303.321 would be further amended by deleting the "two-day" timeline in paragraph (d)(2)(ii), and revising the provision to read as follows: "Ensure that referrals are made as soon as reasonably possible after a child has been identified." In administering the Part C program over an extended period of time, the Department has found that it is unreasonable and impractical for referral sources to be expected to make referrals in this short of a time. The timeline needs to be sufficiently flexible to allow for some variation, on a case-by-case basis, for making referrals.

The introduction of such a tight timeline in the 1989 regulations was included to convey the sense of urgency in which referral sources should act when they identify a child who is suspected of having a disability. The analysis of the comments to those regulations states that—

> Because of the rapidly changing needs of infants and toddlers, the Secretary believes that it is important to establish very short timelines for referring a child for evaluation or services. (54 FR 26337, June 22, 1989).

Although the two-day timeline proved to be impracticable, the sense of urgency conveyed in the initial Part H regulations is still critical. Establishing any timeline (*e.g.*, 5 days) may not provide a reasonable standard for a referral source to follow in making a timely referral; in some cases an earlier referral may be reasonable, and in other cases, a later one. Therefore, the concept of "as soon as reasonably possible" retains the necessary sense of urgency without imposing unrealistic and unreasonable timelines.

In monitoring implementation of this provision, the Department would look at a general pattern of referrals in the State.

Referrals made within a range of two to five days or even somewhat longer would be acceptable. However, a referral pattern that is significantly longer would not meet the spirit of this requirement, nor would it be in the best interests of the children served.

We specifically invite comments on whether the proposed change to the referral timeline in this NPRM (*i.e.,* "Ensure that referrals are made as soon as reasonably possible after a child has been identified") is appropriate, or on what would be a reasonable timeline.

Section 303.322 (Evaluation and assessment) would be amended by revising paragraph (a)(1)(ii) to clarify that the family-directed identification of the needs of each child's family meets the "Family assessment" requirements in paragraph (d). In implementing § 303.322, it is important that lead agencies recognize that there is a direct link between the requirements in proposed paragraphs (a)(1)(ii) and (d).

Individualized Family Services Plans (IFSPs)

Section 303.340 (General) would be amended by changing the title of the section to "Definition of IFSP; lead agency responsibility," and making other changes, as follows: First, the existing definition of IFSP in § 303.340(b) would be redesignated as proposed § 303.340(a) ("Definition of IFSP"), and would be revised to affirmatively state that each child's IFSP team is responsible for developing the child's IFSP, as well as determining the information that is included in the IFSP. Second, the provision on lead agency responsibility in current § 303.340(c) would be redesignated as proposed § 303.340(b), and would be revised by adding an introductory clause ("The lead agency in each State must ensure that—"). Finally, current § 303.340(a) (regarding policies and procedures on IFSPs) would be redesignated as proposed § 303.340(b)(1), and would be revised by replacing "includes" with "has in effect."

A new § 303.341 (Policies and procedures on natural environments) would be added. (A description of that proposed provision, and the changes made to the definition of IFSP that affect the natural environment provisions, is included earlier in this preamble.)

Section 303.342 (Procedures for IFSP development, review, and evaluation) would be amended, first, by making technical changes (*e.g.,* changing the title to "Development, review, and revision of IFSPs", and adding titles to paragraphs (a), (a)(1), and (b)). We are proposing to replace the term "evaluation" with "revision" in the title of the section to more accurately reflect what may happen in both the periodic review meetings and the annual evaluations of the IFSP. For example, § 303.342(c) of the current regulation, which is unchanged in this NPRM, states that "A meeting must be conducted on at least an annual basis to evaluate the IFSP * * *. *and, as appropriate, to revise its provisions.*" (Emphasis added)

Second, § 303.342 would be further amended by adding a new substantive provision in paragraph (a)(2) (Consideration of special factors), as adapted from the Part B statute and regulations. Several commenters recommended that the special considerations provision from Part B (34 CFR 300.346(a)(2)), as adapted, be included in the regulations under this part. In developing each child's IFSP, it is important that the IFSP team consider all factors relating to the child's development and to the services that are required to meet the identified needs of the child. Although many IFSP teams may routinely make these considerations in developing a child's IFSP, this provision helps to ensure that these basic factors will be addressed, as appropriate, in all cases.

Because the special considerations provision under Part B is targeted on preschool and school-aged children, some of the items under that provision may not seem to be directly relevant to infants and toddlers with disabilities. However, each provision has been adapted, to the extent necessary, to apply to children eligible under Part C. For example, although Braille, as such, would not be taught to infants or toddlers who are blind or visually impaired, there are appropriate pre-literacy or readiness activities related to the use of Braille (*e.g.,* the use of tactile stimulation and "raised" picture books) that could enhance the child's ability to learn, and to use, Braille at the appropriate time in his or her school years.

In all of the factors included under § 303.342(a)(2), the IFSP team, which includes the parents, would make individualized determinations, as appropriate, about the implications of any one, or more than one, of the factors with respect to the specific early intervention services that the child is to receive.

Section 303.343 (Participants in IFSP meetings and periodic reviews) would be amended, first, by changing the title to "IFSP team—meetings and periodic reviews." (See earlier discussion under § 303.14 regarding the proposed use of "IFSP team" in these regulations.) Second, § 303.343 would be further amended by revising the provisions in paragraph (a)(2) on how the evaluation results would be appropriately addressed if the person or persons directly involved in conducting the evaluations and assessments is unable to attend the IFSP meeting. The existing regulations provide three options to ensure such a person's involvement: (1) Participation in a telephone conference call; (2) having a knowledgeable authorized representative attend the meeting; or (3) making pertinent records available at the meeting.

Although options 1 and 2 provide an effective means of addressing the contingency described in the preceding paragraph, the Department, in its monitoring of this provision, has found that option 3 does not, by itself, serve as an effective substitute, because there is no assurance that the members present at the IFSP meeting are sufficiently knowledgeable about the evaluation results to appropriately interpret those records at the meeting.

Thus, § 303.343(a)(2) would be amended by restructuring and revising the provision to distinguish between ensuring either—(1) the person's involvement through other means (*e.g.,* through participating in a telephone conference call); or (2) that the results of the evaluations and assessments are appropriately interpreted at the meeting, by making pertinent records available at the meeting, and having a person attend the meeting who is qualified to interpret the evaluation results and their service implications. This provision is further revised to make it clear that the person who is qualified to interpret the results may be one of the participants described in § 303.343(a)(1)(i)–(a)(1)(vi).

These proposed changes would help to ensure that the evaluation records are appropriately interpreted, and, in most cases, without added burden. The proposed change in paragraph (a)(2)(ii) would permit, as in the Part B regulations (34 CFR 300.344(a)(5)), the person qualified to interpret the evaluation results to be someone who is already a member of the IFSP team. The operative term in the proposed requirement is a person who is "qualified to interpret" the evaluation results. Thus, it is possible that any of the members of the IFSP team, including the parents, could have the necessary training and experience to be able to perform this function.

In the event that none of the other members of the team is qualified to effectively interpret the evaluation results, it would be necessary to arrange for an appropriately qualified person to be present, at least for a portion of the meeting, or provide other ways to

ensure that the team is appropriately informed of the results of the evaluations and their service implications, in order to enable the team to develop a meaningful IFSP.

Section 303.344 (Content of IFSP) would be amended by—(1) adding a new paragraph (b)(2) to specify that the statement on family information must be based on the family assessment required under § 303.322(d); and (2) revising paragraph (c) to clarify that the outcomes must be based on the evaluations and assessments conducted under § 303.322(c) and (d).

Although IFSPs for children eligible under this part are required to be based on the evaluations and assessments in § 303.322(c) and (d), experience has shown that this does not always occur. Thus, it would be appropriate to make this proposed change in the existing regulations, so that parents and public agencies will be aware of this requirement. It is important, however, to recognize that this new provision does not add an additional burden.

Section 303.344(d) (Content of IFSP-Early intervention services) would be amended, first, by restructuring the paragraph for clarity and to improve its readability, including adding headings to each redesignated paragraph within that provision (*i.e.*, "Statement of services;" "Frequency, intensity, and method;" "Natural environments—location of services;" and "Payment arrangements"). Second, § 303.344(d) would be further revised by—(1) clarifying that the IFSP must specify, for each service, the frequency, intensity, and method of delivering the service; (2) replacing the substance of the provision on natural environments with more definitive clarifying language; (3) deleting the provision regarding the location of services in paragraph (d)(1)(iii), and the definition of "location" in paragraph (a)(3); and (4) making other technical changes. (A description of the changes on natural environments and location of services is included earlier in this preamble in the discussion on "natural environments.")

With respect to including a statement of early intervention services in a child's IFSP, it is appropriate to describe any specific training to be provided to the parents to assist them in working with their child (§ 303.344(d)(1)). However, the training may not take the place of providing direct service to the child, if the IFSP team determines that direct services are needed. For example, a State could not have a practice of having an occupational therapist train the parents to work with their child as an alternative to providing direct services to the child, if direct services had been determined necessary by the IFSP team.

A new § 303.344(e) would be added to clarify that, except as provided in § 303.345, evaluations and assessments required under § 303.322 (including the functions relating to evaluations and assessments described in the individual early intervention services definitions under § 303.12(d) of the current regulations) must be completed prior to, and in preparation for, conducting an IFSP meeting for each eligible child under this part. In monitoring implementation of the IFSP requirements, the Department has identified instances, as a common practice, in which IFSP meetings were conducted before a child had been evaluated, and the IFSP would list the basic evaluations and assessments to be conducted as IFSP services.

Section 303.344(e), therefore, provides that evaluations and assessments must be conducted prior to the IFSP meeting, to assist the IFSP team in determining the outcomes and services for the child. There, of course, may be situations following the initial evaluation and assessment of a child in which the IFSP team determines that further evaluations or assessments will be necessary during the period in which the child's IFSP is in effect, in order for the team to make an informed decision about possible modifications in the services the child is receiving. In such situations, a statement to that effect would be included in the child's IFSP, and the additional evaluations or assessments would be documented by the IFSP team. In addition, proposed § 303.344(e) includes a reference to existing § 303.345, which permits early intervention services to be provided before the evaluations and assessments are completed, but sets very specific conditions for implementing that provision.

Section 303.344(h) (Transition from Part C services), would be redesignated as paragraph (i), and would be amended by moving the substance of § 303.344(h)(2)(iii) (regarding the transmission of information about the child to an LEA or other relevant agency to § 303.148 (described earlier in this preamble), but making a reference to that step and the conference step. Proposed § 303.344(i) would be further revised by adding a new paragraph (i)(2)(iv), to provide that the IFSP include "Other activities that the IFSP team determines are necessary to support the transition of the child."

The changes that are proposed to the transition provisions in § 303.344(i) help to clarify that the steps required in the IFSP are activities for a child and the child's parents that are necessary to support the transition of the child, whereas the provisions in § 303.148 include the administrative functions and processes that a lead agency must carry out to ensure effective implementation of the transition requirements.

Personnel Training and Standards

Section 303.360 (Comprehensive system of personnel development (CSPD)) would be amended by making technical changes for improved clarity and readability, including restructuring the section and adding paragraph headings.

No other changes would be made to the CSPD requirements at this time. However, we specifically invite comments on the extent to which the CSPD requirements under this part should be the same as the CSPD requirements under Part B, especially with respect to ensuring an adequate supply of qualified personnel. There is a defined statutory link between the CSPD requirements in the Part B and Part C programs. However, the specific requirements under each part are different in both the statute and the implementing regulations.

Section 635(a)(8) of the IDEA provides that each statewide system of early intervention services must include a comprehensive system of personnel development that meets certain specified requirements and "that is consistent with the comprehensive system of personnel development [under Part B of the Act] described in section 612(a)(14) * * *". A corresponding requirement on CSPD is included under the Part B requirements in section 612(a)(14) of the Act, which provides that—

> The State has in effect, consistent with the purposes of this Act and with section 635(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of section 653.

Thus, in submitting comments regarding whether changes are needed in the CSPD requirements under this part, some of the questions to be addressed would be:

- Is there a need to amend the CSPD requirements under these Part C regulations?
- Is there a shortage of qualified early intervention personnel that needs to be addressed through the CSPD requirements in this part?

• Should the Part C CSPD be amended to more specifically address the issue of ensuring an adequate supply of qualified early intervention services personnel? And, if yes, should the provisions in the Part B regulations (34 CFR 300.381) be adapted, or should separate provisions be added?

• Should other areas be addressed, similar to the improvement strategies in 34 CFR 300.382?

Attachment 3 to this NPRM includes the CSPD requirements under the Part B regulations, to assist commenters in responding to the questions listed in the preceding paragraphs.

Section 303.361 (Personnel standards) would be amended by making changes necessary to ensure that the personnel standards requirements under this part fully conform to those requirements in the Part B regulations (34 CFR 300.136). Several commenters in responding to the 1998 notices recommended that these changes be made, and the Department believes that it is appropriate for these requirements to be the same under both parts. Therefore, the following changes would be made:

• Paragraph headings would be added to parallel the paragraph titles under Part B, and for improved readability.

• The substance of the note following § 303.361 would be added to the text of the regulations as policies and procedures under a new paragraph (b)(2) and (b)(3). Proposed paragraph (b)(2) would provide that each State may determine the specific occupational categories required for early intervention services, and revise or expand those categories as needed.

• Proposed paragraph (b)(3) would state—"Nothing in this part requires a State to establish a specified training standard (*e.g.*, a masters degree) for personnel who provide early intervention services under Part C of the Act."

• A provision from the policies and procedures in the Part B regulations (34 CFR 300.136(b)(4)) would be incorporated, without change, as a new paragraph (b)(4) under the policies and procedures for this part. That provision clarifies that—

(4) A State with only one entry-level academic degree for employment of personnel in a specific profession or discipline may modify that standard, as necessary, to ensure the provision of early intervention services without violating the requirements of this section.

Section 303.361(g) (Policy to address shortage of personnel) would be amended by adding, as a new paragraph (g)(2), provisions from Part B regulations (34 CFR 300.136(g)(2) and (3)).

Because of the interest in having a seamless system of services from birth through the early childhood years, and the close link between the types of personnel under both the Part B and Part C programs, having the same personnel standards requirements under both programs would increase the likelihood of having a more effective and efficient mechanism to help ensure that personnel necessary to carry out the purposes of each part are appropriately and adequately prepared and trained.

Subpart E—Procedural Safeguards

Section 303.401(a) (Definition of consent) would be amended by adding a new paragraph (a)(3)(ii) to provide that if a parent revokes consent, that revocation is not retroactive (*i.e.*, it does not negate an action that has occurred after the consent was given and before the consent was revoked).

This provision was adopted from the definition of consent in the Part B final regulations (34 CFR 300.500). If parental consent is required for a service or activity, it would be impractical to allow a parent to retroactively revoke that consent. Thus, once the parents of a child consent to a decision (*e.g.*, for an evaluation or provision of services), any revocation of their consent once the action to which they consented has been carried out will not affect the validity of the action. The analysis of comments to the final Part B regulations state that "Since the non-retroactivity of a parent's revocation is based on the Department's interpretation of the statute, and is important to make clear to all parties, it should be set forth in the regulation itself." (64 FR 12606, March 12, 1999).

Section 303.420 (Due process procedures) would be amended, first, by redesignating existing paragraph (a) (adopting the Part B due process procedures) and paragraph (b) (developing specific Part C due process procedures for this part) as paragraphs (a)(1) and (2); and, second, by adding a new paragraph (b) (on mediation), which provides that if a parent initiates a hearing under paragraph (a)(1) or (a)(2), the lead agency must inform the parent of the availability of mediation.

This proposed provision on mediation would be added to conform to a corresponding provision on mediation in § 300.507(a)(2) of the Part B regulations. The preamble to the 1997 Part B NPRM stated that "the Secretary would interpret the requirement of section 615(e)(1) that mediation be available whenever a hearing is requested, as requiring that parents be notified of the availability of mediation whenever a due process hearing is initiated." (62 FR 55045, October 22, 1997). Consistent with section 639(a)(8) of the Act (which provides that the procedural safeguards under Part C must include "the right of parents to use mediation in accordance with section 615(e) * * *"), the Part B provision in § 300.507(a)(2) should be added to the Part C regulations.

This proposed provision on mediation simply expands on the language in § 303.419(a)(1), which provides that mediation "at a minimum, must be available whenever a hearing is requested under § 303.420." Therefore, proposed § 303.420(b) does not add an additional burden, but simply makes clear, within the context of the required "due process procedures" in § 303.420, that the lead agency has a responsibility to inform parents about the availability of mediation at the time the parents request a hearing.

Section 303.420 would be further amended by replacing the term "complaint" (or "individual child complaints") with "due process hearing or hearings" throughout this section. Similar changes would be made in § 303.402, and in §§ 303.421–303.425, as reflected in the descriptions included later in this preamble.

It is important to make this change because the use of the single word "complaint" to refer to two different types of administrative proceedings under this part has often created confusion for both parents and public agencies. We believes that it would be helpful in resolving this confusion if the term "complaint" would be used only with respect to the State complaint procedures required under §§ 303.510–303.512, and that the term "due process hearing" would be used for parents who are requesting a hearing under §§ 303.420–303.425.

The prior notice provisions under § 303.403(b) require that when a public agency gives written notice to the parents of any action it is proposing or refusing to take, the agency must inform the parents about both—(1) the due process hearing procedures in §§ 303.420–303.425, and (2) the State complaint procedures under §§ 303.510–303.512. The parents would then be able to determine which method or methods of redress they might pursue if there is a dispute about any of the matters in § 303.403(a) (regarding the identification, evaluation, or placement of an eligible child, or the provision of appropriate early intervention services to the child and the child's family).

The note following § 303.420, which describes the differences between two types of administrative complaints,

would be removed because it would no longer be relevant.

Section 303.421 (Appointment of an impartial person) would be amended by—(1) changing the title to "Impartial hearing officer;" (2) replacing "complaint" with "dispute" in paragraph (a)(2); and (3) replacing, in paragraph (b)(1), "the person appointed to implement the complaint resolution process" with "a person who serves as a hearing officer in accordance with this section."

Section 303.422 (Parent rights in administrative proceedings) would be amended by changing the title to "Parent rights in due process hearings;" and by replacing "administrative proceedings" with "due process hearings" in the text.

Section 303.423 (Convenience of proceedings; timelines) would be amended by replacing "proceedings" with "hearings" in the title; and replacing "complaint or "complaint resolution process" with "due process hearing."

Section 303.424 (Civil action) would be amended to make it clear that the section only applies if a party is aggrieved by the findings and decision in a due process hearing.

Section 303.425 (Status of child during proceedings) would be amended by—(1) replacing, in paragraph (a), "complaint under this subpart" with "administrative or judicial proceeding involving a request for a due process hearing under 303.420;" (2) replacing "complaint" with "proceeding" in paragraph (b); and (3) adding a new paragraph (c) to provide, consistent with existing Department policy, that the pendency provisions of this section do not apply if a child is transitioning from early intervention services under Part C to preschool services under Part B.

Subpart F—State Administration

General

Section 303.501 (Supervision and monitoring of programs) would be amended by changing the title of paragraph (b) from "Methods of administering programs" to "Methods of ensuring compliance," and by making a similar change in the text.

Policies and Procedures Related to Financial Matters

These regulations would add a new § 303.519, containing much of previous § 303.520 (Policies related to payment for services). Proposed § 303.520 would address States that have a system of payments, and proposed § 303.521 would address the use of public or private insurance in financing early intervention services.

In proposed § 303.519, the introduction from current § 303.520(a) is incorporated as new § 303.519(a); new paragraphs (a)(1)(i) and (a)(1)(ii) would reference the applicable provisions for States' policies on payment for services, depending on whether or not the State has a system of payments. Section 303.519(a)(1)(ii) would also require that a State without a system of payments have a policy stating that all services are at no cost to parents. Proposed paragraph (a)(1) contains the provision regarding interagency agreements from current § 303.520(a)(2).

IDEA section 632(4)(B) provides that services must be "provided at no cost, except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees." Thus, if there is a payment system under either State law or Federal law, services need not be "at no cost." Under proposed §§ 303.519 and 303.520, the State must affirmatively designate in its policies whether it is including, in its "system of payments," various existing payment systems that families may be subject to. This will provide more clarity for families, policy-makers, and Federal monitors, as to which fees, if any, families must pay under the State's early intervention system.

Under this proposed regulation, current paragraphs (c) and (d) of § 303.520 become paragraphs (b) and (c) of § 303.519. The only change to current paragraph (c) is a technical one, deleting the reference to a State's fifth year of participation. New § 303.519(c)(2) provides that, although income generated from fees under a system of payments, such as fees from a sliding fee scale, do constitute program income under 34 CFR 80.25, States are authorized to add such income to their grant, rather than being required to deduct such program income from the allowable costs of the grant. States are encouraged to use the fee income to augment their Part C grant.

Current § 303.520(d)(2) would be revised, in proposed § 303.519(c)(3), to clarify that, in addition to reimbursements from Federal funds, if a State receives and spends payments from private insurance plans, those funds are not considered "State and local funds" for purposes of the nonsupplanting requirements in § 303.124. Although not reflected in the parallel Part B regulation (§ 300.142(h)(2)), this policy applies equally to insurance payments received by a State under both Parts B and C.

If a State, however, uses State funds from a State public insurance source, such as the State share of Medicaid costs, for early intervention services, those State funds are treated the same as all other State funding sources for purposes of the supplanting test, *i.e.*, they must be counted as part of total State and local spending for early intervention. Income from family fees, on the other hand, would not be part of State and local spending for purposes of § 303.124.

Finally, this proposed regulation adds § 303.519(d), governing the use of Part B funds for infants and toddlers. This proposed paragraph would require a State policy in order to use Part B funds to serve infants and toddlers. Currently several States do use Part B funds, in addition to their Part C funds, to serve infants and toddlers. Without a policy, however, as to which children will be served with Part B funds, it is impossible for the Department to monitor (or for the State to monitor at the local level) whether infants and toddlers for whom Part B section 611 funds are spent in fact are receiving everything they are entitled to under both Part B (including a free appropriate public education) and Part C, as required.

In proposed § 303.519(d), the State policy would need to—(1) assure that infants and toddlers receiving services paid for with Part B funds receive a free appropriate public education in accordance with all Part B requirements; and (2) specify what category, age group, or other segment of all eligible infants and toddlers will be served with Part B funds and therefore receive FAPE. Under this second requirement (in proposed § 303.519(d)(2)), it would not be acceptable, for example, for a State to submit a number indicating how many children would be served, based on the amount of Part B section 611 funds available; States must designate a specific identifiable subgroup of eligible children (*e.g.*, all two-year-olds, or all two-year-olds with deaf-blindness). In the case of section 619 funds, the State would identify whether all two-year-olds who turn three during the school year will be served, or which group will be served if it is to be fewer than all.

Proposed § 303.519(d)(1)(ii) and (iii) reflect statutory requirements and longstanding Department policy. First, whenever funds received under IDEA section 611 are used for infants and toddlers, requirements of both Parts B and C apply with respect to serving those children. While Part B applies because of the use of Part B funds, Part C applies for all States that apply for and receive Part C funds, because all eligible infants and toddlers are covered by Part C, regardless of the funding sources used for a particular child,

except if IDEA section 619 funds are used. Second, if funds under section 619 are used, which is permissible under the statute for two-year-olds who will turn three during the school year, the statute requires that only Part B applies, and not Part C (IDEA section 619(h)).

A related provision regarding the use of Part B funds is added in proposed § 303.520(c)(3). (See discussion later in this preamble).

Proposed § 303.519(e) adopts the "construction" phrase from the Part B regulations, 34 CFR 300.142(i).

System of Payments Provisions

Proposed § 303.520 describes a system of family payments used by a State to finance early intervention services, and the requirements of the corresponding State policy. A system of payments is a written State policy that—(1) meets the requirements of proposed § 303.520, and (2) describes the fees or costs that will be borne by families who receive services under the State's early intervention system.

A system of payments may not include payments by an insurance plan, whether public or private, as opposed to payments by a family to access the benefits of the plan. Parties in some States have argued that a State can include, as part of a system of payments, actual benefits paid by an insurance plan (and require families to assign benefits to the State). The statute, however, specifies a "system of payments *by families*," which does not include an insurance plan payment to a State.

Thus, in a State with a system of payments, *e.g.*, a sliding fee scale, while parents can meet their State fee obligation in any way they choose, including using their insurance to pay the fee, a State could not, under this proposed regulation, require parents to access their insurance plan (*i.e.*, require parents to assign benefits to the State or provider) as part of its "system of payments." Although insurance benefits paid by a plan can not be considered part of a system of payments, they are an important source of funding for early intervention services, as recognized by this proposed regulation.

Proposed § 303.520(a)(2) states that it is the lead agency's duty to ensure compliance with the State system of payments. Under Part C, unlike Part B, the lead agency is the grantee as well as the program administrator; there are no subgrants. Although the lead agency may enter into contracts or make other arrangements for providing services, it retains all of its responsibilities as grantee (see §§ 303.500 and 303.501). Thus the responsibility for oversight of fees, whether local or State-imposed, rests with the lead agency.

Under proposed § 303.520(b), a system of payments may contain one or both of the two types of applicable fees—(1) fees established under State law specifically for early intervention services, such as sliding fee scales; and (2) cost participation fees (*e.g.*, co-pay or deductible amounts) required under existing State or Federal law to access State or Federal insurance programs in which the family is enrolled.

The first type of fee is one established for the early intervention system, as opposed to fees that are broader in scope, such as Medicaid fees. This first type of fee includes the sliding fee scales based on family income that are currently in use in many States. Although a sliding fee is more equitable than a flat fee (which penalizes lower-income families more heavily), States have discretion, under this proposed regulation, as to the type of fee they implement.

The statute, however, specifically states that a system of payments is to be established under "Federal or State *law* * * *" To be established under "State law," the system must be codified in State statute or otherwise have the force of law; a policy that is included with a State's Part C application but not codified does not qualify. The actual dollar amounts need not be codified, as that can change, but the basic payment system must be authorized or enacted by State law. Thus, a State may already have in existence a sliding fee scale for early intervention services; if part of State law, that fee scale would fall under the description in § 303.520(b)(1), and be part of a State's system of payments. The State would need to ensure, however, that its written policies include the information required in proposed § 303.520(c) and (d).

Under "Federal law," some public insurance programs such as Medicaid, CHIP, and TRICARE, may include various forms of family cost participation, such as co-payments or deductible amounts. Under § 303.520(b)(2), if a State wants to access the benefits of public insurance programs for covered families needing early intervention services under Part C, and wants families to pay the applicable co-pay or deductible amounts, the State could designate, as part of its system of payments, those required fees as part of its system of payments.

As proposed § 303.520(c)(2) makes clear, however, such fees, even though included by a State in its system of payments, can not be applied to a family that is unable to pay the fee (current § 303.521(b)(3)(ii), proposed § 303.520(c)(2)), or for a service that must be at no cost, such as service coordination (current § 303.520(b), proposed § 303.520(c)(1)).

In addition, under this proposed regulation, it is entirely optional for a State to include public insurance access fees in its system of payments; under proposed § 303.521(e), States may choose to use Part C funds to pay such co-pay or deductible amounts for families, as an incentive for families to agree to access their insurance for early intervention purposes. Such use of Part C funds does not violate the "payor of last resort" requirement under Part C of IDEA.

Proposed § 303.520(b)(2) applies not only to Federal public insurance programs (such as Medicaid), but to State-funded, non-Federal insurance plans as well, as long as the payments are required by State law. Again, while there is no requirement that the exact dollar amount be specified in a State or Federal statute, proposed § 303.520(b)(2) covers programs for which State or Federal law authorizes or requires family payments.

Proposed § 303.520(c) requires (through § 303.520(d)(1) and § 303.173) a State with a system of payments to submit an assurance that no fees will be charged in three different situations. This paragraph contains provisions taken from current §§ 303.520, 303.521(b), and 303.521(c), collecting in one place the circumstances under which States may not charge any fees for services. It would also clarify that those situations overrule the existence of a system of payments. For example, in a State with a system of payments, if a family is unable to pay the fee, or if a service must be at no cost to parents, such as service coordination, the State may not apply its fees in that situation.

Proposed § 303.520(c)(1) contains the exact language as current § 303.521(b), with the title "Functions not subject to fees" changed to "Functions at public expense." This provision lists the State functions that, under longstanding Part C regulations, must always be at no cost to the family: Child find, evaluation and assessment, service coordination, IFSP development, and implementation of the statewide system, including procedural safeguards.

Proposed § 303.520(c)(2) contains the rule from current § 303.520(b)(3)(ii) concerning a family's inability to pay. Proposed § 303.520(c)(3) is derived from current 303.521(c), and clarifies it. Under this provision, "birth-mandate States" may not charge fees, unless the fees are for services that are not part of

FAPE. For example, if a State has a law guaranteeing FAPE from birth, and a particular child's IFSP contains additional, non-FAPE services such as respite care, the family could be charged under a sliding fee scale only for those non-FAPE early intervention services.

The use of Part B funds is also addressed in proposed § 303.520(c)(3), in response to many commenters' requests to address the use of Part B funds for early intervention services. These commenters requested that States be permitted to establish sliding fee scales, even though the State uses Part B funds to pay for some early intervention services. Proposed § 303.520(c)(3) therefore applies to a State that uses Part B section 611 funds for infants and toddlers in accordance with proposed § 303.519(d) (State policy regarding use of Part B funds). A State may still establish a State system of payments, even if it uses Part B section 611 funds to pay for some services for infants and toddlers. However, the State may not charge fees for any service that is part of a child's free appropriate public education, which is required whenever Part B funds are used. All of the requirements of Part B, including "at no cost," apply whenever Part B funds are used. A State, therefore, would need to distinguish between those services that are part of a child's FAPE, to which the fee scale would not apply, and other services. If a State uses funds under section 619 for two-year-olds who will turn three during the school year, no fees are permitted because only Part B, and not Part C applies.

Proposed § 303.520(d) contains the requirements for State policies in States that have a system of payments. States have always been required to submit, with their applications, policies regarding funding of services, including any fee system (§§ 303.173 and 303.520). Proposed § 303.520(d), however, would add clarity and detail to those required policies, for those States that do not include this detail currently, to ensure that the public is fully aware of and understands the State's system of payments by families.

Several of the requirements in proposed paragraph (d) are in existing § 303.520. Proposed paragraph (d)(4) adds a requirement that the State include in its policies its criteria for judging "inability to pay." Although the basis for that determination is left to the States, this provision would require that the State take into consideration applicable family expenses, using the best available data. We expect that "applicable" expenses would include, at a minimum, the family's documented and unreimbursed expenses related to the eligible child's disability. In other words, family income would be discounted by the family's expenses for the child, that are due to the disability.

States are free, however, to use criteria that deduct more expenses from income. For example, for reasons of convenience, a State may choose to use families' Federal income tax returns and judge all families by "taxable income," from which medical expenses have already been deducted. States may also use other methods of judging income, such as using families' existing documentation from other aid programs. As a general rule, the same standard should be used for all families throughout the State, although a State may choose to take into consideration extraordinary circumstances (for example, a family whose house just burned down may not have the "ability to pay" that appears on paper).

After analyzing the family's finances, the State may apply a threshold amount, for example, 150% of the poverty level, below which families are deemed "unable to pay." We invite comments on how States would implement this proposed regulatory requirement in a practicable way, and how it compares to current practice in States with fee scales. We also invite comment on whether the scope of this provision is appropriate, or whether it should be more limited in the scope of family expenses that are taken into account (for example, whether expenses should be limited to those that result from the eligible child's disability).

Proposed § 303.520(d)(5) applies to States that have a fee scale specifically for early intervention services (as described in proposed § 303.520(b)(1)). Proposed § 303.520(d)(5)(ii)(A) states that a fee scale established by a State for early intervention services can not take into account whether or not a family has insurance. Apparently some States with sliding fee scales have been placing families on the top of the fee scale if they have private insurance, without regard to family income. This practice penalizes the family for having insurance, while the family may not in fact have the resources to pay such a high fee, or may not wish to use their insurance because of the associated long-term costs. To enable the family to have an actual choice between a State fee and using their insurance (see proposed § 303.521(b)), States must set their fees without regard to what a family's insurance might pay.

In proposed § 303.520(d)(5)(ii)(B), the same requirement of taking into account family expenses as in proposed § 303.520(d)(4) ("inability to pay") would apply to the determination of a family's position on a sliding fee scale.

Proposed § 303.520(e) discusses procedural safeguards regarding payments by families. States with a system of payments must give families written notice of their applicable policies on the matters covered in § 303.520, which includes the services that must be at no cost, the types of fees in the State's system, and the State's guidelines for "inability to pay," so that families are aware of their rights.

The notice required by proposed § 303.520(e) may be incorporated into the notice given to the families under § 303.403, or the State may create a separate notice for this purpose. The notice must be given, however, before services begin, and cannot delay the provision of services.

Proposed § 303.520(e)(3) clarifies a family's options for contesting a fee imposed, or contesting a State's determination of the family's ability to pay. Families have the right in these circumstances to file for a due process hearing, agree to mediation, or file a State complaint.

Some States have offered parents an additional option, designed by the State, in order to resolve more quickly these financial issues. Because the State-designed options are often less formal, less time-consuming, and less expensive than the existing options under this part, States are encouraged to offer their own process. However, State remedies may not delay or deny a parent's procedural rights under Part C and its implementing regulations. Thus, a State could not require parents to use its own process as a precondition before filing a State complaint or requesting a due process hearing. The State must include these redress rights in its notice to parents.

Section 303.521 (Fees) would be amended by deleting the section in its entirety, and replacing it with a proposed new § 303.521, entitled, "Use of insurance," as described in the following paragraphs:

Use of Insurance

Proposed new § 303.521 addresses a State's use of families' public and private insurance in funding Part C services. Under this proposed regulation, States would have the following options:

(1) Having no system of payments and providing services at no cost to parents. States would need parental consent for use of private insurance or for use of public insurance where there is a cost to the family.

(2) Having a system of payments and, if it includes a sliding fee scale, giving

parents the option of paying the applicable fee or fees or using their private insurance.

The Department had proposed provisions on the use of private insurance in its October 22, 1997, Notice of Proposed Rulemaking (NPRM) (see 62 FR 55026–55123, 34 CFR 303.520(d)). In that NPRM, the Department requested comments on the proposed provision and on the related issue of public insurance proceeds. The final regulations published on March 12, 1999 did not contain the insurance provision. Instead, the preamble noted that "the policy will not be finalized until more thorough examination of the issues can be done through the process initiated by the April 14 and August 14, 1998 solicitations for comments, and in light of the specific Part C statutory language and framework." (64 FR 12655, March 12, 1999).

During that review process, many groups and individuals submitted comments regarding the use of insurance by States' early intervention programs. In addition, in the Department's administration and monitoring of Part C, it has found confusion and inconsistency surrounding issues of State financing of early intervention services, particularly regarding the use of sliding fee scales and use of families' insurance. There is a great need for guidelines and clarity as to the legal limits in this area. The provisions in proposed § 303.521, therefore, are the result of examining the recommendations of commenters; of weighing the costs and benefits to families and to States of the various possible interpretations of the statute; and of determining the most sound policy consistent with the language and purposes of the Part C statute.

The Department's past policy with regard to States' use of insurance is reflected in several Part C policy letters as well as in the October 22, 1997 NPRM provision. Under that policy, States were not permitted to access a family's private insurance without consent if such use would entail costs to the family.

As pointed out by many of the commenters, the statutory language for Part C is different from Part B's "at no cost" requirement. Under Part C, services must be "provided at no cost, except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees." IDEA section 632(4)(B).

The statute also makes clear that Part C funds are to be "payor of last resort;" all other available funds from public or private sources are to be used first. See IDEA section 640(a). Many commenters pointed out what they perceive to be a conflict between the "payor of last resort" requirement and the "no cost" requirement. In States where there is no system of payments, for example, and the use of a family's private insurance would entail costs for the family, then to require use of that insurance would violate the "no cost" requirement, while to use Part C funds and not the insurance would appear to violate the "payor of last resort" requirement. (Under Departmental policy, however, a State does not violate "payor of last resort" if it uses Part C funds after making all reasonable attempts to secure other funding, including when parents decline to use insurance.)

The history and purpose of Part C (then Part H) provides support for the Department's attempt to balance these two policies; while the statute provides for a system of payments, the legislative history shows that Congress was also concerned that parents be protected from costs. See Sen. Rep. 99–315 at 11 (99th Cong. 2nd Sess. (1986)).

Clearly, Congress intended that the funding of early intervention services through private and public insurance would continue when it enacted Part C. What apparently was not envisioned, however, was the type of catastrophic financial losses that some families have suffered through use of private insurance for early intervention services, such as reaching lifetime caps when a child is still young, with no further insurance coverage available for the child.

The goal of these proposed regulations, therefore, is to assist States in their responsibility to maximize various financial resources, using Federal Part C dollars only as a last resort, while protecting parents from overly burdensome costs that can make early intervention services prohibitive for families.

Proposed § 303.521(a) contains the same prohibition as in Part B against forcing families to enroll in a public insurance program, such as Medicaid, as a condition of receiving services. The Department received comments both supporting and opposing this policy for Part C. Although it is true, as stated by several commenters, that if States are prevented from requiring families to enroll in Medicaid, they lose a potential funding source, that source was not a preexisting one for that family, and some families have reasons (cultural, privacy etc.) for not wanting to enroll in such public insurance programs. Moreover, if a child, otherwise deemed eligible for Part C services by the State, were denied services because the State wanted the parents to enroll in Medicaid and the parents refused, this would effectively add an additional eligibility test for the child that is not justified by the statute. For families already enrolled, however, or who voluntarily enroll in public insurance programs, States may access that insurance to finance early intervention services, as provided in proposed § 303.521(b).

Proposed § 303.521(b) addresses a State's use of a family's public insurance. Many commenters suggested that, in States that ensure services at no cost to families (or without a system of payments), States be prohibited from requiring parents to use public or private insurance. This policy does not permit States, however, to optimize resources and use Part C funds as "payor of last resort" where there is no cost to the family, as may be the case with public insurance. As many other commenters noted, if deprived of the ability to access these insurance resources, States could find it difficult financially to continue in the Part C program.

Proposed § 303.521(b) applies in States with or without a system of family payments. It provides that States can require that families access their public insurance, whether it be Federal or State, as long as there is no cost to the family.

Under proposed § 303.521(b)(1)(ii), a State that wishes to access a family's public insurance proceeds may require the parents to incur out-of-pocket costs such as co-payments and deductibles under those public insurance programs, only if such costs are included in a system of payments under § 303.520(b)(2). Even in those States in which such payments are included, however, parents are still protected from such costs if they are unable to pay (which may be likely for many Medicaid families), or under any of the other circumstances listed in § 303.520(c).

The State may also choose to use Part C funds to pay the co-pay or deductible amounts, as provided in proposed § 303.521(e), as an incentive for families to agree to access their insurance for early intervention purposes. For parents choosing the option of using their private insurance (proposed § 303.521(c)), and for parents with private insurance in a State with no system of payments, this may help the State in obtaining parent consent to use the insurance.

In proposed § 303.521(b)(1)(iii), the Department proposes the same criteria for a "cost" to families as in the Part B provision on public insurance (34 CFR 300.142(e)(2)(iii)). We particularly invite comment on whether these criteria are

equally applicable to families with infants and toddlers.

In the majority of cases, use of Federal, State, or local public insurance programs by a State to provide or pay for a service to a child will not result in a current or foreseeable future cost to the family or child. For example, under the Early Periodic Screening, Diagnosis and Treatment (EPSDT) program of Medicaid, potentially available benefits are only limited based on what the Medicaid agency determines to be medically necessary for the child and are not otherwise limited or capped. Many infants and toddlers with disabilities who are eligible for public insurance programs are eligible for services under the EPSDT program. Where there is no cost to the family or the child, States are encouraged to use the public insurance benefits to the extent possible.

The language in proposed § 303.521(b)(1)(iii)(D) has been changed from the corresponding Part B provision, to read "risk loss of eligibility for, *or decrease in benefits under,* home and community-based waivers * * *" to more accurately reflect the common problem for families of children who are covered under such waivers, that was intended to be addressed by the Part B language.

Proposed § 303.521(b)(2) further provides that, if any of the listed costs apply, the State may still access the family's public insurance if it first obtains written consent under the provisions in § 303.401.

Proposed § 303.521(b)(3) addresses the relatively small number of families who are covered by both public and private insurance. Under this provision, in States without a system of payments, in order to access the family's private insurance the State must follow the consent requirements in proposed § 303.521(d). Thus, if a Medicaid-enrolled child also is covered by private insurance, the State without a system of payments must choose one of two options—either obtain the parent's consent to use the private insurance, or not use Medicaid to provide the service. One way the State might be able to obtain that consent would be to offer to cover the costs that would normally, under Medicaid, be assessed against the private insurer. Part C funds can be used for this purpose. (See proposed § 303.521(e)).

Proposed § 303.52l(b)(4) provides that, for States with fee scales, the State cannot bill a family's public insurance for more than the cost of the service, and can not bill for any amounts for which the parents are responsible under the fee scale. Thus, if a State's fee system charges a family a fee equal to one-third the cost of the service, the State can only bill the Medicaid or other public insurance for the remaining two-thirds.

For private insurance, many commenters suggested, as a way to balance the competing interests of the State's "payor of last resort" responsibility and the "at no cost" provision of the statute, that in States with a system of payments, States should first determine what the family has to pay, then let the parents decide whether to use their private insurance or pay the fee. This policy of parental choice, which is consistent with the Department's past Part C policy on private insurance, has been adopted and proposed as § 303.521(c) for those States that have, under State law, fees specifically for early intervention services, as described in proposed § 303.520(b)(1).

For such States, proposed § 303.521(c) would govern their treatment of all families who have private insurance. Under this provision, the State gives the family the option of accessing the insurance or paying the applicable fee directly. Some families with private insurance, want to avoid long-term negative consequences of using that with private insurance, such as exceeding a lifetime cap or risking cancellation of insurance; these families may prefer to pay the applicable fee without using their insurance. Other families may not have such extreme risks from using insurance, or are able to negotiate with their insurance company and determine an amount the company will pay that will avoid these risks. The State can assist families with this process, either by giving the duty to service coordinators, under proposed § 303.302(d)(8), or by otherwise providing for such assistance under the proposed revision to § 303.3 ("Use of Funds").

If a family opts to pay the fee, the State cannot then also access the family's insurance to cover the remaining cost of the service, unless the family gives consent. Similarly, if a family opts to use its insurance but the insurance does not cover the entire cost of a service, the State could only require the family to pay the uncovered portion up to but not exceeding the amount of the State fee. Families with no insurance would be required to pay the exact amount of the applicable fee (subject to the "ability to pay" requirement), and States could not apply a different standard or different fee scale for families with insurance.

When giving parents the option described in proposed § 303.521(c), the protections in § 303.520(c) apply. Thus a family that has private insurance may be "unable to pay," under the State's definition of that term, and the option would not apply to that family. Services would then be at no cost to the family and the State would need consent to access the family's private insurance (under proposed § 303.521(d)).

Proposed § 303.521(c) would require States to give parents this option for "each service" for which the State charges fees, rather than for each incidence of a service. Thus, when the IFSP is first written, and thereafter for any change in the frequency or type of service, the State would need to give the parents this option. If the parent's insurance does not cover a particular IFSP service, the family pays the applicable fee for that service.

The policy that families cannot be forced to use their private insurance, in States with no system of payments, has been adopted in proposed § 303.521(d). This provision also applies in States with a system of payments, for situations covered under § 303.520(c) (when fees may not be charged), and in States whose system of payments includes only public insurance co-pays or deductibles (fees described in § 303.520(b)(2)). This provision therefore applies in all circumstances except that of a State with a system of payments that includes fees described in § 303.521(b)(1), such as a sliding fee scale.

Under this provision, if a State has no system of payments (and in the other applicable circumstances), the State is prohibited from using a family's private insurance without the parent's consent. The provisions governing this consent are the same as the parallel provision in Part B, § 300.142(f). The Part B provision requires parental consent for any use of private insurance, because all services must be at no cost to the family, and use of private insurance entails costs. Similarly, for Part C in a State without a system of payments, services are at no cost and the State must obtain consent to use private insurance.

Under proposed § 303.521(d), a State needs parental consent for using the family's private insurance for each separate service in a child's IFSP. For example, if at an IFSP meeting the State wants to access the family's insurance for only the child's physical therapy, which is to be provided twice a week, the State obtains parental consent for that use. If, at a subsequent IFSP review, the physical therapy service is changed to three times per week, the State must obtain new written consent from the parents; they need not obtain consent for every session of each service. This

policy is consistent with the intended meaning of the corresponding Part B provision, § 300.142(f)(2), but because its wording ("Each time the public agency proposes to access * * *") has caused confusion, we propose more detailed language in this Part C provision.

This proposed treatment of private insurance should not lead to a burdensome change in existing practice among the States. The Department's past policy required, for all States, consent when there is a cost to the family (and in practice there appears to be virtually always some cost). Under the proposed rule, only States without fees such as sliding fees would be required to obtain consent; States with a system of payments that includes sliding fees would give families the option described in proposed § 303.521(b).

States are encouraged, however, to access all available sources of funding, using Part C funds as a last resort. To this end, some States have worked to increase the amount of funding by public and private insurers, by taking steps such as negotiating for changes in their State's Medicaid plan, passing State legislation governing private insurers, and working with families to negotiate with, or clarify the limitations of, private insurance coverage.

This regulation would make clear, in proposed § 303.521(e), "Use of Part C funds," that a State is able to use Part C funds to pay the cost that would otherwise be covered by a third party payer, in order to access the family's insurance. Proposed § 303.521(e) contains language taken from the Part B regulations at § 300.142(g). If the State fails to obtain parental consent for use of private insurance (or public insurance where costs are involved), the State may use Part C funds for the service. In such a situation the State does not violate the "payor of last resort" provision because it has first taken all reasonable steps to secure alternate funding sources. This provision also would provide, as in Part B, that to make it easier for parents to consent to private insurance use (or to choose to use public insurance), a State may use Part C funds to pay co-pay or deductible amounts. This practice can also assist States in situations in which services must be at no cost to the family, due to any of the circumstances described in proposed § 303.520(c); by using Part C funds to pay the family's required co-pay or deductible amount, the State avoids a cost to the family.

Other Changes to Subpart F

Section 303.523 (Interagency agreements) would be amended in several ways. First, the language in § 303.523(a) would be clarified to require the lead agency to enter into an interagency agreement with any other State-level agency involved in the State's early intervention program, whether that involvement is through provision of services or through funding to entities that use those funds for early intervention purposes.

Second, the substance of the note following § 303.523 would be added to the text of the regulations as proposed new § 303.523(c)(2), and the note would be deleted. The substance of the note clarifies that, with respect to resolving intra-agency and interagency disputes, a State may meet the requirement in any way permitted under State law, including (1) providing for a third party (*e.g.*, an administrative law judge) to review the dispute and render a decision; (2) assignment of the responsibility by the Governor to the lead agency or Council; or (3) having the final decision made by the Governor. This change would strengthen the provision regarding dispute resolution in paragraph (c)).

Finally, paragraph (d) of § 303.523, regarding additional components of agreements, would be revised to reference three specific topics that should be addressed if appropriate and relevant to the two agencies: transition, policies on payment for services, and child find. Regarding transition, current § 303.148(c) (proposed § 303.148(f)) requires a lead agency that is not the State educational agency (SEA) to have an interagency agreement with the SEA that ensures coordination on the transition of eligible children to Part B services; proposed § 303.523(d) should reference that requirement.

Similarly, proposed § 303.523(d)(2) would reference the requirement in current § 303.520 (proposed § 303.519(a)(2)) that policies related to payment for services must be reflected in the appropriate interagency agreements. This includes both policies on family payments, and payments by other agencies, as specified in §§ 303.173 and 303.522. Thus, if a State adopts a system of payments that involves Medicaid co-payments, that policy must be in the interagency agreement with the State Medicaid agency. The use of funds or the provision of services would be relevant topics for an interagency agreement between the lead agency and any other State agency that provides either funding or services for early intervention purposes (*e.g.*, a Health or developmental disabilities agency, or a State Department of Education providing Part B funds).

The third topic, child find, is proposed as optional for the lead agency to include in its interagency agreements, although States are encouraged to do so. Child find may be an appropriate issue to include in agreements between the lead agency and most other relevant State agencies.

The proposed changes to §§ 303.173 and 303.523 are intended to strengthen the regulatory requirements on interagency cooperation. The Secretary has found, through monitoring, that many States' early intervention systems suffer from a lack of interagency cooperation, to the detriment of infants and toddlers with disabilities and their families. The interagency requirements of Part C are crucial to implementing an actual statewide system that pulls together the various existing efforts in the State.

The Secretary has found, in some States, that political or "turf-war" differences keep agencies from working together or even communicating; in others, it is only the lead agency's lack of effort that keeps agencies from coordinating. Although the Department is aware that the existence of a written agreement between agencies does not ensure that it will be implemented, the fact that specific elements would be required in the agreement should cause the necessary discussions to take place, greatly increasing the chances of actual cooperation.

Subpart G—State Interagency Coordinating Council

Section 303.653 (Transitional services) would be amended by making technical changes to improve the clarity and readability of the section, including—(1) changing the title of the section to "Transition services;" (2) replacing "toddlers with disabilities" with "eligible children under this part;" and (3) adding "preschool" before "services under Part B."

Executive Order 12866

1. Potential cost and benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly

interfere with State, local, private, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

Benefits and Costs of Statutory Changes

Following is an analysis of the costs and benefits of the most significant changes in the regulations for the Grants for Infants and Families program (Part C). In conducting this analysis, the Department examined the extent to which changes made by these proposed regulations add to or reduce the costs for State lead agencies and others as compared to the costs of implementing Part C under the previously published regulations. Variation in practice from State to State makes it hard to predict the effect of these changes. However, based on this analysis, the Secretary has concluded that the changes included in these regulations will not, on net, impose significant costs in any one year. An analysis of specific provisions follows:

Section 303.341—Policies and Procedures on Natural Environments

Section 303.341 of the proposed regulations clarifies that decisions on natural environments, and any justifications needed, are made by the IFSP team and are made separately for each service to be provided to the child. It also clarifies that services may be provided in a setting other than a natural environment, such as a center-based program or other setting appropriate to the age and needs of the child, if appropriately justified based on the child's needs. Over 200 of the 328 comments received by the Department on the Part C regulations expressed concern about the provisions related to natural environments. Questions raised by many of these commenters indicated that there is confusion as to what is required and that the provisions were being misinterpreted to mean that services could only be provided in the home of an eligible child or in community settings in which children without disabilities participate. No cost impact is assigned to this clarification since the provisions do not represent a change in policy or impose new substantive requirements. However, the proposed clarification should benefit both families and providers by making it clear that services may be provided in settings other than the natural environment if the IFSP team determines that this is necessary to meet the needs of the child.

Section 303.519(a)—Policies Related to Payment for Services

Section 303.519(a) clarifies that a State without a system of payments must have a policy stating that all services are at no cost to parents. Office of Special Education Programs (OSEP) monitoring activities indicate that some States, local agencies, and local programs are charging for services, even though the State has not adopted a system of payments. Current IDEA section 632(4)(B), which is the same as prior section 672(2)(B), provides that services must be "provided at no cost, except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees." Because this change in the regulations is a clarification of, rather than a change in the law, no cost impact is assigned to this requirement.

Section 303.519(c)—Nonsupplanting Requirement

Under proposed § 303.519(c)(3), the provisions of current § 303.520(d)(2) would be revised to clarify that, in addition to reimbursements from Federal funds, if a State receives and spends payments from private insurance plan, those funds are not considered "State and local funds" for purposes of the nonsupplanting requirements in § 303.124. This provision provides a benefit to States by alleviating them of the requirement to align State funding with reimbursements for services rendered from private insurance that will fluctuate from year to year depending on factors such as the number of parents who have private insurance, whether the particular services provided are eligible for reimbursement, and variation in reimbursement rates. Those factors are not under the control of the State agency and are not budgeted items.

Section 303.519(d)—Use of Part B Funds

Section 303.519(d) would require States proposing to use funds under Part B to serve infants and toddlers to have a written policy regarding the use of Part B funds that identifies the age range or other characteristics of the groups to be served. A written policy is necessary in order for OSEP to monitor the States and the States to monitor at the local level to ensure that children for whom Part B funds are spent are receiving everything they are entitled to under both Part C and Part B, including a free appropriate public education. Since States have the discretion to decide whether to use Part B funds for this purpose, this provision will not result in increased program costs. The provision may impose a short-term administrative burden on States that choose to use Part B funds for infants and toddlers with disabilities and do not currently have a written policy on the use of these funds for this purpose. However, we believe that most States would develop a written policy for administrative reasons, regardless of the existence of this requirement. In addition, the short-term burden of developing a written policy is offset by the long-term positive benefit derived from having a written policy. A clear policy will help reduce confusion among State and local education agencies as to which children will be served with Part B funds, and reduces the potential for costly audit findings regarding the proper use of Part B funds. States, at their discretion, may also use Part B Preschool Grants program funds to provide a free appropriate public education to two-year-olds who will turn 3 during the school year. IDEA, section 619(h) provides that, if a State uses Part B Preschool Grants funds for two-year-olds in this instance, only Part B applies. According to a May, 1999 "section 619 Profile" study by the National Early Childhood Technical Assistance System (NECTAS), as of fiscal year 1999, approximately 22 States had developed or were developing policies on the use of Preschool Grant funds for these children.

Section 303.520(b)—Establishment of a System of Payments in State Law or Regulation

Proposed § 303.520(b) specifies that a system of payments may contain either fees established specifically for early intervention or participation fees required to access State or Federal insurance programs. This proposed paragraph further provides that the system of payments must be established under State law and the participation fees authorized or enacted by State or Federal law. This provision is being added to the regulations to ensure that States are aware of and have fully considered policies that will have cost implications for State agencies and consumers, reduce the potential for arbitrary changes in policy, and improve the ability of the Federal Government to monitor compliance. It will also provide more clarity for families, and policy makers as to which fees, if any, families must pay under the State's early intervention system and reduces

potential confusion over which policies must be authorized by State statute or regulations versus those that can be issued administratively. To date, a total of 49 of the 56 Part C lead agencies reported information for fiscal year 2000 on the status of their systems of payment. This data indicates that 18 of these States have policies related to systems of payment. Of these States, 16 had policies established under State law or regulations. Currently it appears that only two States would be affected by this change. We believe that the benefits described above will offset any burden associated with establishing these policies in State law or regulations that may be experienced by these two States or other States deciding to adopt systems of payment in the future. The requirement also will result in consistent practice among all the States.

Section 303.520(c)(3)—States That Provide FAPE to Infants and Toddlers With Disabilities

Currently, eleven of the 56 States and Outlying Areas have legislation requiring that FAPE be provided to some or all children with disabilities beginning at birth, and an additional State requires that FAPE be provided to children with disabilities beginning at age 2. Section 303.521(c) of the current regulations provides that States with mandates to serve children from birth may not charge parents for any service required under that law that are provided to children under Part C. New § 303.520(c)(3) replaces § 303.521(c) and modifies that provision to clarify that the State may establish a system of payments for other services that are not a part of FAPE. Similarly, this new provision also specifies that, if a State uses Part B section 611 funds to pay for some services for infants and toddlers, the State may still establish a system of payments for services that are not part of a child's free appropriate public education. These changes clarify a State's ability to charge for services that are not required to be provided free of charge under the FAPE requirements. Because most Part C services would also be FAPE services, these changes should result in very little shifting of costs between State agencies and families.

Section 303.520(d)(4)—Criteria for Judging Inability To Pay

The current regulations at § 303.520(a)(3)(ii) specify that, "The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family." Proposed § 303.520(d)(4) adds a requirement that States with a system of payments must include their criteria for judging "inability to pay" in their policies submitted to OSEP. Most of the approximately 18 States that have systems of payment do not currently include their guidelines for judging "inability to pay" in their policies submitted to OSEP. We believe these criteria should be part of the official, public policies of the States to ensure that the criteria are administered uniformly, parents know what criteria are being used to determine their ability to pay, and the requirement is efficiently administered and monitored. The resultant burden to the State in developing or submitting criteria for judging inability to pay is minimal compared to the anticipated benefit of having clear guidelines for families and providers affected by this provision.

Sections 303.520(d)(4) and 303.520(d)(5)(ii)(B)—Consideration of Applicable Family Expenses

Proposed § 303.520(d)(4) on judging ability to pay, and § 303.520(d)(5)(ii)(B) on sliding fee scales would require that States take into consideration applicable family expenses, using the best available data. The cost to States of this change is indeterminate because States will have flexibility to determine how they will address this requirement, including the extent to which expenses would be considered in determining the family's ability to pay. While we expect that there may be some cost to States, the Department believes that there is a direct offsetting benefit to society by ensuring that families are not unduly burdened or that children with disabilities are not denied services because extraordinary expenses were not considered in the calculation of whether the family has the ability to pay. We further believe that this benefit to families outweighs any potential administrative burden or cost to the State derived from the incorporation of this provision.

Section 303.520(d)(5)(ii)(A)—Family Insurance and the Calculation of Position on the State Fee Scale

Section 303.520(d)(5)(ii)(A) provides that, for States with fees for early intervention services that have implemented a fee scale, the calculation of a family's position on the scale may not take into account the existence of a family's insurance. Inclusion of the family's insurance in the calculation can result in these families being placed at the top of the fee scale, even if those families intend to cover the fees themselves. Most of the States with a system of payments have implemented fee scales. Since the National Early Intervention Longitudinal Study (NEILS) indicates that approximately 57 percent of the families participating in Part C have some form of private insurance, this provision could result in a shift of costs from families to the States to the extent that States are currently taking insurance into account in determining a family's ability to pay. While we anticipate that there will be no net change in the cost to society, we particularly invite comments on the impact of this provision.

Section 303.520(e)(3)—Procedural Safeguards

Proposed § 303.520(e)(3) sets out the procedures for redress if a parent wishes to contest the imposition of a fee. Families have always had the right to seek mediation, file for a due process hearing, and file a State complaint. However, the Department is concerned that some Part C families may not be aware that these rights apply to the imposition of a fee or a State's determination of a family's ability to pay. This section clarifies that these rights apply to this situation. Since the procedural safeguards under Subpart E (or the Part B hearing procedures if the State has adopted them) already apply, we are not ascribing a cost impact to this provision.

Section 303.521—Prohibition Against Mandatory Enrollment in Public Insurance Programs

Proposed § 303.521(a) provides that no State may require parents to sign up for or enroll in a public insurance program in order for their child to receive early intervention services. OSEP is aware that a small number of States have required families to apply for third-party resources such as Medicaid. The increased cost to States that may result from the proposed change is outweighed by the benefits of protecting the privacy and autonomy of the family. A family's decision to enroll in public insurance programs may be affected by religious concerns, the perceived stigma of public insurance, and considerations related to family finances. However, nothing in this provision precludes a State from providing information on and promoting public insurance programs, assisting families with application forms, or using combined enrollment forms. We believe that most families will want to enroll in these programs to obtain medical coverage for the entire family. However, we do not have data on the number or percentage of eligible families participating in this program that refuse to enroll in public insurance programs. We invite commenters to

provide this information, if it is available on the State or local level.

Section 303.521(b)(1)(iii)—State Access to Public Insurance Benefits

The NEILS indicates that approximately 44 percent of the families participating in the Part C program participate in a government-assisted health insurance program such as Medicaid or the SCHIP. For families already enrolled or who voluntarily enroll in public insurance programs, State agencies are currently accessing that insurance to finance early intervention services. Proposed § 303.521(b)(1)(iii) provides that a State may not use a child's benefits under a public insurance program without obtaining parental consent if that use would result in a negative outcome for the family such as a decrease in available lifetime coverage or any other insured benefit, the family paying for services that would otherwise be covered by the insurance program, an increase in premiums, or the discontinuation of insurance. The proposed regulations adopts the same criteria regarding parental consent as in the Part B regulations (see § 300.142(e)). We expect this to have a limited effect. In most cases, use of Federal, State, or local public insurance programs by a State to provide or pay for a service will not result in a current or foreseeable future cost to the family or child, and States will not be required to get consent. In the limited number of cases where a State might need to obtain consent, the burden to States is outweighed by the benefit to families of having this protection.

Section 303.521(c)—Parental Payment Option

According to preliminary data obtained from the NEILS, approximately 95 percent of children participating in Part C are covered by some form of insurance. For States with a fee scale for early intervention services, proposed section 303.521(c) gives parents the option of using their public or private insurance or paying the applicable fee for each service. This provision will provide a direct benefit to some families. While it clearly places the locus of responsibility for payments with the family, it provides the family with options as to how it will fulfill that responsibility. For example, a family may choose to pay the fee rather than jeopardize future benefits or eligibility under a private insurance policy. This provision may diminish State access to insurance if more parents in States with systems of payments, when given a clear choice, opt to pay the applicable fees. However, any loss of access is offset by the benefits to families of increasing parental choice and may increase the likelihood that children with disabilities will get the services they need.

Section 303.521(d)—Parental Permission To Access Private Insurance Benefits

Section 303.521(d) provides that, in States with no system of payments, the State needs parental consent for using a family's private insurance. This is a slight variation on past practice, which required consent when there is a cost to the family. As there is virtually always some cost, this provision does not represent a change in practice and should not result in increased costs for States with no system of payments. For States that do have a system of payments, the provision described at § 303.521(c) precludes the need for formal consent.

Section 303.521(e)—Use of Part C Funds

Under proposed § 303.521(e), States may choose to use Part C funds to pay co-pay or deductible amounts for families in order to access public or private insurance that would otherwise not be available. States may be unable to obtain parental consent to use a family's insurance if the parents would be required to pay co-pay or deductible amounts. This section may help States to access additional funds. In States with a system of payments, the State could pay the co-pay amount as an incentive for parents to choose the insurance option, thus benefiting both the State and the family. We foresee no negative consequence for the family.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. We invite comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 303.1 Purpose of the early intervention program for infants and toddlers with disabilities.
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulation easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make this proposed regulation easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory document will not have a significant economic impact on a substantial number of small entities. These regulations govern States in their implementation of the IDEA Part C program. States are not small entities under the Regulatory Flexibility Act. Part C does not authorize subgrants, and thus there are no small entities directly affected by these regulations. The small entities that would be indirectly affected are local entities that enter into contracts with the State to provide Part C services. However, the regulations would not have a significant economic impact on these small entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements, concerning the issue of providing services in natural environments, and the issue of use of insurance, to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

Sections 303.100, 303.121, 303.122, 303.123, 303.124, 303.125, 303.126, 303.127, 303.128, 303.141, 303.142, 303.143, 303.144, 303.145, 303.146, 303.148, 303.160, 303.161, 303.162, 303.164, 303.165, 303.166, 303.167, 303.168, 303.169, 303.170, 303.171, 303.172, 303.173, 303.174, 303.175, 303.176, 303.180, 303.300, 303.301, 303.320, 303.321, 303.322, 303.323, 303.340, 303.341, 303.342, 303.343, 303.344, 303.345, 303.346, 303.360, 303.361, 303.420, 303.421, 303.422, 303.423, 303.424, 303.425, 303.460, 303.500, 303.501, 303.519, 303.520, 303.522, 303.523, 303.524, 303.525, 303.526, 303.527, 303.528, 303.540, 303.600, 303.601, 303.602, 303.603, 303.604, 303.650, 303.651, 303.652, 303.653, and 303.654 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the

Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

For purposes of addressing the Paperwork Reduction Act requirements, we have divided the sections listed in the preceding paragraph into three categories, as follows:

The first category includes three sections that contain, for the first time, information collection requirements that have been added by this NPRM, including §§ 303.100, 303.341, and 303.519. However, in large part, these provisions do not add new paperwork burden, as described in the following paragraphs:

First, we have included § 303.100 in the list of new information collection requirements to clarify, within the general application requirements in subpart B of this part, that the information contained in a State's application must include "copies of all applicable State statutes, regulations, and other State documents that show the basis of that information." This proposed change, which conforms to the final Part B regulations (34 CFR 300.110(b)(2)), does not add a new burden, but merely clarifies and gives added emphasis to existing State application requirements in the Part C regulations. (The Department and the States have appropriately interpreted the existing definition of "policies" in § 303.20 to ensure that if a State policy is found in a State statute or regulation, the Part C application must include that document.)

Second, although we have included § 303.341 in the list of new information requirements, States have traditionally been required to submit policies and procedures on natural environments. New section 303.341 includes, in modified form, the requirements for policies and procedures on natural environments that are currently included in 303.167(c) of the existing regulations. Current § 303.167(c) would be amended by this NPRM, by removing the substance on natural environments to new § 303.341(a), and further revising the language in § 303.167(c) to clarify that each application must include "Policies and procedures on natural environments that meet the requirements of §§ 303.341 and 303.344."

Finally, new § 303.519 has been included under category 1, even though many of the information collection requirements in that section were moved from current § 303.520, as part of an effort to improve the readability and clarity of those provisions. (See description of the proposed changes to State financing of early intervention services, included earlier in this preamble).

The second category includes sections that are currently approved by OMB, but are being revised by this NPRM. This category includes §§ 303.124, 303.128, 303.148, 303.165, 303.167, 303.169, 303.173, 303.174, 303.321, 303.340, 303.344, 303.361, and 300.523.

The third category contains sections currently approved by OMB that either are not affected by the NPRM or do not contain any new information collection requirements. This category includes §§ 303.122, 303.123, 303.125, 303.126, 303.127, 303.141, 303.142, 303.143, 303.144, 303.145, 303.146, 303.160, 303.161, 303.162, 303.165, 303.166, 303.168, 303.170, 303.171, 303.172, 303.174, 303.175, 303.176, 303.180, 303.301, 303.302, 303.322, 303.323, 303.342, 303.343, 303.345, 303.346, 303.360, 303.420, 303.421, 303.422, 303.423, 303.424, 303.425, 303.460, 303.500, 303.501, 303.522, 303.524, 303.525, 303.526, 303.527, 303.528, 303.540, 303.600, 303.601, 303.602, 303.603, 303.604, 303.650, 303.651, 303.652, 303.653, and 303.654.

The new or revised sections with paperwork requirements that are described under categories 1 and 2 in the preceding paragraphs contain information collection provisions that affect a State's application for a grant under this part, including the sections with specific application requirements in subpart B of this NPRM, and the substantive sections to which they refer in subparts D and F. A description of this information collection is included in the following paragraphs.

Collection of Information: Early Intervention Program for Infants and Toddlers With Disabilities

State Application for a Grant, §§ 303.100, 303.124, 303.128, 303.148, 303.165, 303.167, 303.169, 303.173, 303.174, 303.321, 303.340, 303.341, 303.344, 303.361, 303.519, 303.523. In order to receive funds under this part for any fiscal year, a State must have on file with the Secretary a statement of assurances and an approved application that meets specified requirements under subpart B of these regulations. All States have approved applications on file with the Secretary that meet the requirements under the current regulations.

In all of the sections listed in the preceding paragraph, States are not required to submit any information that is currently on file with the Secretary, but are only required to submit new information that would be added by this NPRM. Consistent with changes made by the IDEA Amendments of 1997 (Pub. L. 105–17), the new or revised State policies and procedures required by this NPRM must be submitted only one time to the Secretary, and remain in effect unless amended. Therefore, States will have a one-time paperwork burden in complying with these proposed changes, and not an annual burden.

The one-time burden for meeting the application requirements described in the preceding paragraphs is estimated to average 8 hours for 56 respondents, including reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Thus, the total burden for this one-time collection is estimated to be 448 hours.

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, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.
This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means 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. Among other requirements, the Executive order requires us to consult with State and local elected officials respecting any regulations that have federalism implications and either preempt State law or impose substantial direct compliance costs on State and local governments, and are not required by statute, unless the Federal government provides the funds for those costs. Although we do not believe that these proposed regulations have federalism implications as defined in Executive Order 13132, we encourage State and local elected officials to review them and to comment specifically on whether they may impose substantial direct compliance costs on State and local governments without reimbursement of those costs by the Federal government. Also, though we do not intend to preempt State law, we are asking for comments as to whether these proposed regulations would result in any unintended preemption of State law.

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(Catalog of Federal Domestic Assistance Number: 84–181 Early Intervention Program for Infants and Toddlers with Disabilities)

List of Subjects in 34 CFR Part 303

Education of individuals with disabilities, Grant programs—education, Infants and toddlers, Reporting and recordkeeping requirements.

Dated: August 23, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 303 to read as follows:

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

Subpart A—General

Purpose, Eligibility, and Other General Provisions

Sec.
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303.2 Eligible recipients of an award.
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303.167 Individualized family service plans.
303.168 Comprehensive system of personnel development (CSPD).
303.169 Personnel standards.
303.170 Procedural safeguards.
303.171 Supervision and monitoring of programs.
303.172 Lead agency procedures for resolving complaints.
303.173 Policies and procedures related to financial matters.
303.174 Interagency agreements; resolution of individual disputes.
303.175 Policy for contracting or otherwise arranging for services.
303.176 Data collection.

Participation by the Secretary of the Interior

303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.

Authority: 20 U.S.C. 1431–1445, unless otherwise noted.

Subpart A—General

Purpose, Eligibility, and Other General Provisions

§ 303.1 Purpose of the early intervention program for infants and toddlers with disabilities.

The purpose of this part is to provide financial assistance to States to—

(a) Maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

(c) Enhance the States' capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

(d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

(Authority: 20 U.S.C. 1431)

§ 303.2 Eligible recipients of an award.

Eligible recipients include the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1401(27), 1443)

§ 303.3 Use of Part C funds.

(a) Funds under Part C of the Act may be used for the following activities:

(1) To maintain and implement a statewide system of early intervention services for children eligible under this part and their families.

(2) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.

(3) To expand and improve on services for eligible children and their families that are otherwise available, consistent with § 303.527.

(4) To provide a free appropriate public education, in accordance with part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year.

(5) To strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purpose of—

(i) Identifying and evaluating at-risk infants and toddlers;

(ii) Making referrals of the infants and toddlers identified and evaluated under paragraph (a)(5)(i) of this section; and

(iii) Conducting periodic follow-up on each referral under paragraph (a)(5)(ii) of this section to determine if the status of the infant or toddler involved has changed with respect to the eligibility of

the infant or toddler for services under this part.

(6) To assist families—

(i) To understand the sources of financing early intervention services, including public and private insurance programs, and how to access those sources; and

(ii) To be knowledgeable about any potential long-term costs involved in accessing the sources described in paragraph (a)(6)(i) of this section, and how to minimize those costs.

(b)(1) Funds under Part C of the Act may not be used to pay costs of a party related to an action or proceeding under section 639 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a lead agency from using funds under Part C of the Act for conducting due process hearings under section 639 of the Act (for example, paying a hearing officer, providing a place for conducting a hearing, and paying the cost of providing the parent with a transcription of the hearing).

(Authority: 20 U.S.C. 1433 and 1438)

§ 303.4 Limitation on eligible children.

This part 303 does not apply to any child with disabilities receiving a free appropriate public education, in accordance with 34 CFR part 300, with funds received under 34 CFR part 301.

(Authority: 20 U.S.C. 1419(h))

§ 303.5 Applicable regulations.

(a) The following regulations apply to this part:

(1) The Education Department General Administrative Regulations (EDGAR), including—

(i) Part 76 (State Administered Programs), except for § 76.103;

(ii) Part 77 (Definitions that Apply to Department Regulations);

(iii) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(iv) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(v) Part 81 (Grants and Cooperative Agreements under the General Education Provisions Act—Enforcement);

(vi) Part 82 (New Restrictions on Lobbying);

(vii) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Work Place (Grants));

(viii) Part 97 (Protection of Human Subjects);

(ix) Part 98 (Student Rights in Research, Experimental Programs and Testing; and

(x) Part 99 (Family Educational Rights and Privacy).

(2) The regulations in this part 303.

(3) The following regulations in 34 CFR part 300 (Assistance to States for the Education of Children with Disabilities Program): §§ 300.506–300.512 (Part B due process hearing procedures), if the lead agency adopts these provisions under § 303.420(a)(1); §§ 300.560–300.577 (Confidentiality of information); and §§ 300.580–300.587 (Department procedures for determining a State's eligibility under Part C of the Act).

(b) In applying the regulations cited in paragraphs (a)(1) and (a)(3) of this section, any reference to—

(1) *State educational agency* means the lead agency under this part;

(2) *Special education, related services, free appropriate public education, free public education,* or *education* means "early intervention services" under this part;

(3) *Participating agency,* when used in reference to a local educational agency or an intermediate educational agency, means a local service provider under this part; and

(4) *Section 300.127* (confidentiality of personally identifiable information) means § 303.460.

(Authority: 20 U.S.C. 1401, 1416, 1417, 1442)

Definitions

Note to §§ 303.6—303.23: Sections 303.6–303.23 contain definitions, including a definition of "natural environments" in § 303.18, that are used throughout these regulations. Other terms are defined in the specific subparts in which they are used. The following is a list of those terms and the specific sections in which they are defined:

Appropriate professional requirements in the State (§ 303.361(a)(1))
Assessment (§ 303.322(b)(2))
Consent (§ 303.401(a))
Evaluation (§ 303.322(b)(1))
Frequency and intensity (§ 303.344(d)(2)(i))
Highest requirements in the State applicable to a profession or discipline (§ 303.361(a)(2))
Individualized family service plan and IFSP (§ 303.340(b))
Impartial (§ 303.421(b))
Method (§ 303.344(d)(2)(ii))
Native language (§ 303.401(b))
Personally identifiable (§ 303.401(c))
Primary referral sources (§ 303.321(d)(3))
Profession or discipline (§ 303.361(a)(3))
Special definition of "aggregate amount" (§ 303.200(b)(1))
Special definition of "infants and toddlers" (§ 303.200(b)(2))
Special definition of "State" (§ 303.200(b)(3))
State approved or recognized certification, licensing, registration, or other comparable requirements (§ 303.361(a)(4))

§ 303.6 Act.

As used in this part, the term *Act* means the Individuals with Disabilities Education Act.

(Authority: 20 U.S.C. 1400)

§ 303.7 Children.

As used in this part, the term *children* means infants and toddlers with disabilities as that term is defined in § 303.16.

(Authority: 20 U.S.C. 1432(5))

§ 303.8 Council.

As used in this part, the term *Council* means the State Interagency Coordinating Council.

(Authority: 20 U.S.C. 1432(2))

§ 303.9 Day; business day.

(a) As used in this part, the term *day* means calendar day, unless otherwise indicated as business day in accordance with paragraph (b) of this section.

(b)(1) If a State, under § 303.420(a)(1), adopts the Part B due process hearing procedures in 34 CFR part 300, the term business day is used with respect to hearing rights in 34 CFR 300.509.

(2) *Business day* means Monday through Friday, except for Federal and State holidays.

(Authority: 20 U.S.C. 1431–1445)

§ 303.10 Developmental delay.

As used in this part, the term *developmental delay,* when used with respect to a child residing in a State, has the meaning given to that term under § 303.300(b).

(Authority: 20 U.S.C. 1432(3))

§ 303.11 Early intervention program.

As used in this part, the term early intervention program means the total effort in a State that is directed at meeting the needs of children eligible under this part and their families.

(Authority: 20 U.S.C. 1431–1445)

§ 303.12 Early intervention services.

(a) *General.* As used in this part, the term *early intervention services* means developmental services that—

(1) Are provided—

(i) Under public supervision; and

(ii) At no cost, unless, subject to § 303.520(b)(3), Federal or State law provides for a system of payments by

families, including a schedule of sliding fees;

(2) Are designed to meet—

(i) The developmental needs of each child eligible under this part in one or more of the areas listed in § 303.16(a)(1); and

(ii) The needs of the family related to enhancing the child's development;

(3) Are selected in collaboration with the parents;

(4) Meet the standards of the State, including the requirements of this part;

(5) Subject to the exclusions on health services in § 303.13(c), include the services listed in paragraph (b) of this section;

(6) Are provided in a timely manner by qualified personnel, as defined in § 303.22, including the types of personnel listed in paragraph (c) of this section;

(7) Are provided in conformity with an individualized family service plan (IFSP); and

(8) To the maximum extent appropriate to the needs of the child, are provided in natural environments, as defined in § 303.18.

(b) *Types of services; definitions.* The term *early intervention services* includes the following:

(1)(i) *Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(ii) *Assistive technology service* means a service that directly assists an eligible child or the child's parents in the selection, acquisition, or use of an assistive technology device for the child. The term includes—

(A) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(C) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(D) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) Training or technical assistance for a child with disabilities or, if appropriate, that child's family; and

(F) Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

(2) *Audiology services* includes—

(i) Identification of children with hearing loss, using appropriate audiologic screening techniques;

(ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with hearing loss;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices; and

(vii) Counseling and guidance of children, parents, and teachers regarding hearing loss.

(3) *Family training, counseling,* and *home visits* means services provided, as appropriate, by social workers, psychologists, special educators, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(4) *Health services* (See § 303.13).

(5) *Medical services only for diagnostic or evaluation purposes* means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

(6) *Nutrition services* includes—

(i) Conducting individual assessments in—

(A) Nutritional history and dietary intake;

(B) Anthropometric, biochemical, and clinical variables;

(C) Feeding skills and feeding problems; and

(D) Food habits and food preferences;

(ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (d)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(7) *Occupational therapy*—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include—

(A) Identification, assessment, and intervention;

(B) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(C) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(8) *Physical therapy* includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include—

(i) Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction;

(ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(9) *Psychological services* includes—

(i) Administering psychological and developmental tests and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(10) Service coordination means assistance and services provided by a service coordinator to a child eligible under this part and the child's family, in accordance with § 303.302.

(11) *Social work services* includes—

(i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(ii) Preparing a social or emotional developmental assessment of the child within the family context;

(iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;

(iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and

(v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(12) *Special instruction* includes the following:

(i) The design of learning environments and activities that promote the child's acquisition of skills in the following developmental areas: cognitive; physical; communication; social or emotional; and adaptive.

(ii) Planning that leads to achieving the outcomes in the child's IFSP, including curriculum planning, the planned interaction of personnel, and planning with respect to the appropriate use of time, space, and materials.

(iii) Providing families with information, skills, and support related to enhancing the skill development of the child.

(iv) Working with the child to enhance the child's development.

(13) *Speech-language pathology services* includes—

(i) Identification of children with communicative or swallowing disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or swallowing disorders and delays in development of communication skills;

(iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or swallowing disorders and delays in development of communication skills; and

(iv) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(14) *Transportation and related costs* includes the cost of travel (*e.g.*, mileage, or travel by taxi, common carrier, or other means) and other costs (*e.g.*, tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

(15) *Vision services* means—

(i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(iii) Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

(c) *Qualified personnel.* Qualified personnel providing early intervention services under this part include—

(1) Audiologists;

(2) Family therapists;

(3) Nurses;

(4) Nutritionists;

(5) Occupational therapists;

(6) Orientation and mobility specialists;

(7) Pediatricians and other physicians;

(8) Physical therapists;

(9) Psychologists;

(10) Social workers;

(11) Special educators; and

(12) Speech and language pathologists.

(d) *General role of service providers.* To the extent appropriate, service providers in each area of early intervention services included in paragraph (d) of this section are responsible for—

(1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area;

(2) Training parents and others regarding the provision of those services; and

(3) Participating in the multidisciplinary team's assessment of a child and the child's family, and in the development of integrated goals and outcomes for the individualized family service plan.

(Authority: 20 U.S.C. 1401(1) and (2); 1432(4))

Note to § 303.12: The lists of services in paragraph (b) and qualified personnel in paragraph (c) of this section are not exhaustive. Early intervention services may include such services as the provision of respite and other family support services. Qualified personnel may include such personnel as vision specialists, paraprofessionals, parent-to-parent support personnel, augmentative communication specialists, and technology specialists.

§ 303.13 Health services.

(a) As used in this part, the term *health services* means services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services.

(b) Subject to paragraph (c) of this section, the term includes—

(1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services;

(2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services; and

(3) Nursing services, including—

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.

(c) The term does not include the following:

(1) Services that are—

(i) Surgical in nature (such as cleft palate surgery, surgery for club foot, the shunting of hydrocephalus, or the installation of devices such as pacemakers, cochlear implants, or prostheses); or

(ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

(2) Devices necessary to control or treat a medical or other condition (such as pacemakers, cochlear implants, prostheses, or shunts).

(3) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

(Authority: 20 U.S.C. 1432(4))

Note to § 303.13: The definition in this section distinguishes between the health services that are required under this part and the medical-health services that are not required. The IFSP requirements in subpart D of this part provide that, to the extent appropriate, these other medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for the services or the steps that will be taken to secure the services through public or private sources. Identifying these services in the IFSP does not impose an obligation to provide the services if they are otherwise not required to be provided under this part. (See

§ 303.344 (f) and note 3 following that section.)

§ 303.14 IFSP; IFSP team.

As used in this part, the term—

(a) *IFSP* means the individualized family service plan, as that term is defined in § 303.340(a); and

(b) *IFSP team* means the group of participants described in § 303.343 that is responsible for developing, reviewing, and, if appropriate, revising an IFSP for an eligible child under this part.

(Authority: 20 U.S.C. 1221e–3; 1436)

§ 303.15 Include; including.

As used in this part, the term *include* or *including* means that the items named are not all of the possible items that are covered whether like or unlike the ones named.

(Authority: 20 U.S.C. 1431–1445)

§ 303.16 Infants and toddlers with disabilities.

(a) As used in this part, the term *infants and toddlers with disabilities* means individuals from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

(i) Cognitive development.

(ii) Physical development, including vision and hearing.

(iii) Communication development.

(iv) Social or emotional development.

(v) Adaptive development; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(b) The term may also include, at a State's discretion, children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1432(5))

Note 1 to § 303.16: The phrase "a diagnosed physical or mental condition that has a high probability of resulting in developmental delay," as used in paragraph (a)(2) of this section, applies to a condition if it typically results in developmental delay. Examples of these conditions include chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments, including hearing and vision; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; disorders secondary to exposure to toxic substances, including fetal alcohol syndrome; and severe attachment disorders.

Note 2 to § 303.16: With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as disabled.

Under this provision, States have the authority to define who would be "at risk of having substantial developmental delays if early intervention services are not provided." In defining the "at risk" population, States may include well-known biological and environmental factors that can be identified and that place infants and toddlers "at risk" for developmental delay. Commonly cited factors include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, and a history of abuse or neglect. It should be noted that "at risk" factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.

§ 303.17 Multidisciplinary.

As used in this part, the term *multidisciplinary* means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in § 303.322 and development of the IFSP in § 303.342.

(Authority: 20 U.S.C. 1435(a)(3), 1436(a))

§ 303.18 Natural environments.

As used in this part, the term *natural environments*—

(a) Means settings that are natural or normal for an eligible child's age peers who have no disabilities; and

(b) Includes—

(1) The home; and

(2) Community settings in which children without disabilities participate.

(Authority: 20 U.S.C. 1435 and 1436)

§ 303.19 Parent.

(a) *General.* As used in this part, the term *parent* means—

(1) A natural or adoptive parent of a child;

(2) A guardian, but not the State if the child is a ward of the State;

(3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or

(4) A surrogate parent who has been assigned in accordance with § 303.406.

(b) *Foster parent.* Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part C of the Act if—

(1) The natural parents' authority to make the decisions required of parents under the Act has been extinguished under State law; and

(2) The foster parent—

(i) Has an ongoing, long-term parental relationship with the child;

(ii) Is willing to make the decisions required of parents under the Act; and

(iii) Has no interest that would conflict with the interests of the child.

(Authority: 20 U.S.C. 1401(19), 1431–1445)

§ 303.20 Policies.

(a) As used in this part, the term *policies* means State statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the State's position concerning any matter covered under this part.

(b) State policies include—

(1) A State's commitment to maintain the statewide system (see § 303.140);

(2) A State's eligibility criteria and procedures (see § 303.300);

(3) Policies concerning the State's system of payments, if any, and the State's financing of early intervention services, in accordance with §§ 303.519 through 303.521.

(4) A State's standards for personnel who provide services to children eligible under this part (see § 303.361);

(5) A State's position and procedures related to contracting or making other arrangements with service providers under subpart F of this part; and

(6) Other positions that the State has adopted related to implementing any of the other requirements under this part.

(Authority: 20 U.S.C. 1431–1445)

§ 303.21 Public agency.

As used in this part, the term *public agency* includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families.

(Authority: 20 U.S.C. 1431–1445)

§ 303.22 Qualified personnel.

As used in this part, the term *qualified personnel* means personnel who have met State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing early intervention services.

(Authority: 20 U.S.C. 1432(4))

Note to § 303.22: These regulations contain the following provisions relating to a State's responsibility to ensure that personnel are qualified to provide early intervention services:

Section 303.12(a)(4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under part B of the Act (i.e., that the State educational agency establish

standards and ensure that those standards are currently met for all programs providing special education and related services).

Section 303.12(a)(6) provides that early intervention services must be provided by qualified personnel.

Section 303.361(b) requires statewide systems to have policies and procedures relating to personnel standards.

§ 303.23 State.

Except as provided in § 303.200(b)(3), the term State means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the jurisdictions of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1401(27))

§ 303.24 EDGAR definitions that apply.

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Award
Contract
Department
EDGAR
Fiscal year
Grant
Grantee
Grant period
Private
Public
Secretary

(Authority: 20 U.S.C. 1431–1445)

Subpart B—State Application for a Grant

General Requirements

§ 303.100 Conditions of assistance.

(a) *General.* (1) In order to receive funds under this part for any fiscal year, a State must have on file with the Secretary—

(i) A statement of assurances that meets the requirements of §§ 303.120 through 303.128; and

(ii) An approved application that contains—

(A) The information required in §§ 303.140–303.148 and 303.161 through 303.176; and

(B) Copies of all applicable State statutes, regulations, and other State documents that show the basis of that information.

(2) An application that meets the requirements of this part remains in effect until the State submits to the Secretary modifications of that application.

(b) *Exception for prior State policies on file with the Secretary.* If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets an application requirement, including any policy or procedure filed under this part before July 1, 1998, that meets such a requirement, the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part.

(c) *Amendments to a State's application.* The Secretary may require a State to modify its application under this part to the extent necessary to ensure the State's compliance with this part if—

(1) An amendment is made to the Act, or to the regulations under this part;

(2) A new interpretation of the Act is made by a Federal court or the State's highest court; or

(3) An official finding of noncompliance with Federal law or regulations is made with respect to the State.

(Authority: 20 U.S.C. 1434 and 1437)

§ 303.101 How the Secretary disapproves a State's application or statement of assurances.

The Secretary follows the procedures in 34 CFR 300.581-300.586 before disapproving a State's application or statement of assurances submitted under this part.

(Authority: 20 U.S.C. 1437)

Public Participation

§ 303.110 General requirements and timelines for public participation.

(a) Before submitting to the Secretary its application under this part, and before adopting a new or revised policy that is not in its current application, a State must—

(1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;

(2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and

(3) Provide adequate notice of the hearings required in paragraph (a)(2) of this section at least 30 days before the dates that the hearings are conducted.

(b) A State may request the Secretary to waive compliance with the timelines in paragraph (a) of this section. The Secretary grants the request if the State demonstrates that—

(1) There are circumstances that would warrant such an exception; and

(2) The timelines that will be followed provide an adequate opportunity for public participation and comment.

(Authority: 20 U.S.C. 1437(a)(3))

§ 303.111 Notice of public hearings and opportunity to comment.

The notice required in § 303.110(a)(3) must—

(a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public, including individuals with disabilities and parents of infants and toddlers with disabilities, throughout the State about the hearings and opportunity to comment on the application or policy; and

(b) Be in sufficient detail to inform the public about—

(1) The purpose and scope of the State application or policy, and its relationship to part C of the Act;

(2) The length of the comment period and the date, time, and location of each hearing; and

(3) The procedures for providing oral comments or submitting written comments.

(Authority: 20 U.S.C. 1437(a)(7))

§ 303.112 Public hearings.

Each State must hold public hearings in a sufficient number and at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1437(a)(7))

§ 303.113 Reviewing public comments received.

(a) *Review of comments.* Before adopting its application, and before the adoption of a new or revised policy not in the application, the lead agency must—

(1) Review and consider all public comments; and

(2) Make any modifications it deems necessary in the application or policy.

(b) *Submission to the Secretary.* In submitting the State's application or policy to the Secretary, the lead agency must include copies of news releases, advertisements, and announcements used to provide notice to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities.

(Authority: 20 U.S.C. 1437(a)(7))

Statement of Assurances

§ 303.120 General.

(a) A State's statement of assurances must contain the information required in §§ 303.121 through 303.128.

(b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State's participation under this part.

(c) A State may submit a revised statement of assurances if the statement

is consistent with the requirements in §§ 303.121 through 303.128.

(Authority: 20 U.S.C. 1437(b))

§ 303.121 Reports and records.

The statement must provide for—

(a) Making reports in such form and containing such information as the Secretary may require; and

(b) Keeping such records and affording access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

(Authority: 20 U.S.C. 1437(b)(4))

§ 303.122 Control of funds and property.

The statement must provide assurance satisfactory to the Secretary that—

(a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part; and

(b) A public agency will administer the funds and property.

(Authority: 20 U.S.C. 1437(b)(3))

§ 303.123 Prohibition against commingling.

(a)(1) The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.

(2) As used in this part, commingle means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure.

(b) The assurance in paragraph (a)(1) of this section is satisfied by the use of an accounting system that includes an audit trail of the expenditure of funds awarded under this part. Separate bank accounts are not required.

(c) To the extent that funds from Federal, State, local, and private funding sources can be identified, with a clear audit trail for each source, a State, at its discretion—

(1) May allow those funds to be consolidated for carrying out the requirements of this part; and

(2) May set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State's early intervention program.

(Authority: 20 U.S.C. 1437(b)(5)(A))

§ 303.124 Prohibition against supplanting.

(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.

(b)(1) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available.

(2) Allowance may be made for—

(i) Decreases in the number of children who are eligible to receive early intervention services under this part; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

(c) For purposes of paragraph (b) of this section, subject to the exceptions in paragraph (b)(2) of this section, a State must be able to demonstrate, in any fiscal year, that the total amount of State and local funds expended for early intervention services equaled or exceeded the lesser of—

(1) The budgeted amount that is referenced in paragraph (b) of this section, for that same fiscal year; and

(2) The amount actually expended for early intervention services in the most recent preceding fiscal year.

(Authority: 20 U.S.C. 1437(b)(5)(B))

§ 303.125 Fiscal control.

The statement must provide assurance satisfactory to the Secretary that fiscal control and fund accounting procedures will be adopted to the extent necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part.

(Authority: 20 U.S.C. 1437(b)(6))

§ 303.126 Payor of last resort.

The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in § 303.527, including the requirements on—

(a) Nonsubstitution of funds; and

(b) Non-reduction of other benefits.

(Authority: 20 U.S.C. 1437(b)(2))

§ 303.127 Assurance regarding expenditure of funds.

The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in § 303.3.

(Authority: 20 U.S.C. 1437(b)(1))

§ 303.128 Traditionally underserved groups.

The statement must include an assurance satisfactory to the Secretary that policies and practices have been adopted to ensure—

(a) That traditionally underserved groups, including minority, low-income, inner-city, and rural families, are meaningfully involved in the planning and implementation of all the requirements of this part; and

(b) That these families have access to culturally competent services within their local geographical areas.

(Authority: 20 U.S.C. 1437(b)(7))

General Requirements for a State Application

§ 303.140 General.

A State's application under this part must contain information and assurances demonstrating to the satisfaction of the Secretary that—

(a) The statewide system of early intervention services required in § 303.160 is in effect; and

(b) A State policy is in effect that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State.

(Authority: 20 U.S.C. 1434 and 1435(a)(2))

§ 303.141 Information about the Council.

Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of subpart G of this part.

(Authority: 20 U.S.C. 1437(a)(3))

§ 303.142 Designation of lead agency.

Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.

(Authority: 20 U.S.C. 1437(a)(1))

§ 303.143 Designation regarding financial responsibility.

Each application must include a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies.

(Authority: 20 U.S.C. 1437(a)(2))

§ 303.144 Assurance regarding use of funds.

Each application must include an assurance that funds received under this part will be used to assist the State to maintain and implement the statewide system required under subparts D through F of this part.

(Authority: 20 U.S.C. 1475, 1437(a)(3))

§ 303.145 Description of use of funds.

(a) *General.* Each application must include a description of how a State proposes to use its funds under this part for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (e) of this section.

(b) *Administrative positions.* Each application must include—

(1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and

(2) For each position, the percentage of salary paid with those funds.

(c) *Maintenance and implementation activities.* Each application must include—

(1) A description of the nature and scope of each major activity to be carried out under this part in maintaining and implementing the statewide system of early intervention services; and

(2) The approximate amount of funds to be spent for each activity.

(d) *Direct services.* (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, including a description of any services provided to at-risk infants and toddlers as defined in § 303.16(b), and their families, consistent with §§ 303.521 and 303.527;

(2) The description must include information about each type of service to be provided, including—

(i) A summary of the methods to be used to provide the service (*e.g.,* contracts or other arrangements with specified public or private organizations); and

(ii) The approximate amount of funds under this part to be used for the service.

(e) *At-risk infants and toddlers.* For any State that does not provide direct services for at-risk infants and toddlers described in paragraph (d)(1) of this section, but chooses to use funds as described in § 303.3(e), each application must include a description of how those funds will be used.

(f) *Activities by other agencies.* If other agencies are to receive funds under this part, the application must include—

(1) The name of each agency expected to receive funds;

(2) The approximate amount of funds each agency will receive; and

(3) A summary of the purposes for which the funds will be used.

(Authority: 20 U.S.C. 1437(a)(3) and (a)(5))

§ 303.146 Information about public participation.

Each application must include the information on public participation that is required in § 303.113(b).

(Authority: 20 U.S.C. 1437(a)(7))

§ 303.147 Services to all geographic areas.

Each application must include a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State.

(Authority: 20 U.S.C. 1437(a)(6))

§ 303.148 Transition to preschool or other appropriate services.

(a) *General.* Each application must include a description of the policies and procedures to be used to ensure a smooth transition for children receiving early intervention services under this part to preschool or other appropriate services, including the information required in paragraphs (b) through (f) of this section.

(b) *Family involvement; notification of local educational agency.* The application must describe—

(1) How the families of children served under this part will be included in the transition plans for the children; and

(2) How the lead agency under this part will notify the local educational agency (LEA) for the area in which an eligible child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law.

(c) *Transmittal of records; parental consent.* (1) The application must include, in accordance with paragraphs (c)(2) and (c)(3) of this section, a description of the policies and procedures for transmitting records about the child to an LEA, or any other agency, for the purposes of—

(i) Facilitating the child's smooth transition to preschool or other appropriate services; and

(ii) Ensuring continuity of services for the child.

(2)(i) Subject to paragraph (c)(3) of this section, the lead agency must obtain parental consent, in accordance with § 303.401(a), before transmitting any records about the child.

(ii) The records referred to in paragraph (c) of this section include any personally identifiable information about the child, including—

(A) Evaluation and assessment information required in § 303.322; and

(B) Copies of IFSPs that have been developed and implemented in accordance with §§ 303.340 through 303.346.

(3) Consent is not required before transmitting directory information about a child to an LEA (*e.g.,* the child's name, address, telephone number, and age), if the information is provided for the specific purpose of assisting the LEA in implementing the child find requirements under 34 CFR 300.125.

(d) *Conference to discuss services.* The application must describe how the lead agency will—

(1) In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the parents of the child, convene a conference among the lead agency, the family, and the LEA at least 90 days (and at the discretion of the parties, up to 6 months) before the child is eligible for the preschool services, to discuss any services that the child may receive; or

(2) In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the parents of the child, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive.

(e) *Program options; transition plan.* The application must include a description of the policies and procedures to be used—

(1) To review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(2) To establish a transition plan for the child.

(f) *Interagency agreement.* If the State educational agency (SEA) (the agency responsible for administering preschool programs under part B of the Act) is not the lead agency under this part, the policies and procedures described in paragraph (a) of this section must provide for the establishment of an interagency agreement between the lead agency and the SEA, to ensure appropriate coordination on transition matters.

(Authority: 20 U.S.C. 1437(a)(8))

Note: Among the matters that should be considered in developing policies and procedures to ensure a smooth transition of children from one program to the other are the following:

The financial responsibilities of all appropriate agencies.

The responsibility for performing evaluations of children.

The development and implementation of an individualized education program (IEP) or an IFSP for each child, consistent with the requirements of law (*see* § 303.344(i), section 612(a)(9) of the Act, and 34 CFR 300.132).

The coordination of communication between agencies and the child's family.

The mechanisms to ensure the uninterrupted provision of appropriate services to the child.

Components of a Statewide System—Application Requirements

§ 303.160 Minimum components of a statewide system.

Each application must address the minimum components of a statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State. The minimum components of a statewide system are described in §§ 303.161 through 303.176.

(Authority: 20 U.S.C. 1435(a), 1437(a)(9))

§ 303.161 State definition of developmental delay.

Each application must include the State's definition of developmental delay, as required in § 303.300(b).

(Authority: 20 U.S.C. 1435(a)(1))

§ 303.162 Central directory.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has developed a central directory of information that meets the requirements in § 303.301.

(Authority: 20 U.S.C. 1435(a)(7))

§ 303.163 [Reserved]

§ 303.164 Public awareness program.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program that meets the requirements in § 303.320.

(Authority: 20 U.S.C. 1435(a)(6))

§ 303.165 Comprehensive child find system.

Each application must include—

(a) The policies and procedures required in § 303.321(b);

(b) Information demonstrating that the requirements on coordination in § 303.321(c) are met;

(c) The referral procedures required in § 303.321(d), and either—

(1) A description of how the referral sources are informed about the procedures; or

(2) A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and

(d) The timelines in § 303.321(e).

(Authority: 20 U.S.C. 1435(a)(5))

§ 303.166 Evaluation, assessment, and nondiscriminatory procedures.

Each application must include information to demonstrate that the requirements in §§ 303.322 and 303.323 are met.

(Authority: 20 U.S.C. 1435(a)(3); 1436(a)(1), (d)(2), and (d)(3))

§ 303.167 Individualized family service plans.

Each application must include the following:

(a) An assurance that a current IFSP is in effect and implemented for each eligible child and the child's family.

(b) Information demonstrating that—

(1) The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340 through 303.343, and 303.345; and

(2) The content of IFSPs used in the State is consistent with the requirements in § 303.344.

(c) Policies and procedures on natural environments that meet the requirements of §§ 303.341 and 303.344(d)(3).

(Authority: 20 U.S.C. 1435(a)(4), 1436(d))

§ 303.168 Comprehensive system of personnel development (CSPD).

Each application must include information to show that the requirements in § 303.360(b) are met.

(Authority: 20 U.S.C. 1435(a)(8))

§ 303.169 Personnel standards.

Each application must include policies and procedures that are consistent with the requirements in § 303.361.

(Authority: 20 U.S.C. 1435(a)(9))

§ 303.170 Procedural safeguards.

Each application must include procedural safeguards that—

(a) Are consistent with §§ 303.400 through 303.406, 303.419 through 303.425 and 303.460; and

(b) Incorporate either—

(1) The due process procedures in 34 CFR 300.506 through 300.512; or

(2) The procedures that the State has developed to meet the requirements in §§ 303.419, 303.420(b), and 303.421 through 303.425.

(Authority: 20 U.S.C. 1435(a)(13))

§ 303.171 Supervision and monitoring of programs.

Each application must include information to show that the requirements in § 303.501 are met.

(Authority: 20. U.S.C. 1435(a)(10)(A))

§ 303.172 Lead agency procedures for resolving complaints.

Each application must include procedures that are consistent with the requirements in §§ 303.510 through 303.512.

(Authority: 20 U.S.C. 1435(a)(10))

§ 303.173 Policies and procedures related to financial matters.

Each application must include/the following:

(a) Funding policies that meet the requirements in § 303.519.

(b)(1) Information about funding sources, as required in § 303.522, including the identification of each State agency that provides early intervention services, or funding for those services, for children eligible under Part C, even if the agency does not receive Part C funds.

(2) The information required in paragraph (b)(1) of this section must include—

(i) The name of the agency; and

(ii)(A) The specific funds used by the agency for early intervention services (*e.g.*, State Medicaid or State special education funds); and

(B) The intended use of those funds.

(c) Procedures to ensure the timely delivery of services, in accordance with § 303.525.

(d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.

(Authority: 20 U.S.C. 1435(a)(10) (D) and (E), 1435(a)(12), 1440)

§ 303.174 Interagency agreements; resolution of individual disputes.

Each application must include—

(a) A copy of each interagency agreement that has been developed under § 303.523; and

(b) Information to show that the requirements in § 303.524 are met.

(Authority: 20 U.S.C. 1435(a)(10)(E) and (F))

§ 303.175 Policy for contracting or otherwise arranging for services.

Each application must include a policy that meets the requirements in § 303.526.

(Authority: 20 U.S.C. 1435(a)(11))

§ 303.176 Data collection.

Each application must include procedures that meet the requirements in § 303.540.

(Authority: 20 U.S.C. 1435(a)(14))

Participation by the Secretary of the Interior

§ 303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.

(a) The Secretary makes payments to the Secretary of the Interior for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior.

(b)(1) The Secretary of the Interior must distribute payments under this part to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or combinations of those entities, in accordance with section 684(b) of the Act.

(2) A tribe or tribal organization is eligible to receive a payment under this section if the tribe is on a reservation that is served by an elementary or secondary school operated or funded by the Bureau of Indian Affairs (BIA).

(c)(1) Within 90 days after the end of each fiscal year the Secretary of the Interior must provide the Secretary with a report on the payments distributed under this section.

(2) The report must include—

(i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year;

(ii) The amount of each payment; and

(iii) The date of each payment.

(Authority: 20 U.S.C. 1443(b))

Subpart C—Procedures for Making Grants to States

§ 303.200 Formula for State allocations.

(a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(b) For the purpose of allotting funds to the States under paragraph (a) of this section—

(1) Aggregate amount means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under § 303.203 and to the jurisdictions under § 303.204;

(2) Infants and toddlers means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and

(3) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1443(c))

§ 303.201 Distribution of allotments from non-participating States.

If a State elects not to receive its allotment, the Secretary reallots those funds among the remaining States, in accordance with § 303.200(a).

(Authority: 20 U.S.C. 1443(d))

§ 303.202 Minimum grant that a State may receive.

No State receives less than 0.5 percent of the aggregate amount available under § 303.200 or $500,000, whichever is greater.

(Authority: 20 U.S.C. 1443(c)(2))

§ 303.203 Payments to the Secretary of the Interior.

The amount of the payment to the Secretary of the Interior under § 303.180 for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under § 303.204.

(Authority: 20 U.S.C. 1443(b))

§ 303.204 Payments to the jurisdictions.

(a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in § 303.2 in accordance with their respective needs.

(b) The provisions of Pub. L. 95–134, permitting the consolidation of grants to the outlying areas, do not apply to funds provided under paragraph (a) of this section.

(Authority: 20 U.S.C. 1443(a))

Subpart D—Program and Service Components of a Statewide System of Early Intervention Services

General

§ 303.300 Child eligibility—criteria and procedures.

(a) *General.* (1) Each statewide system of early intervention services (system) must include the eligibility criteria and procedures, consistent with § 303.16, that—

(i) Will be used by the State in carrying out programs under this part; and

(ii) Meet the requirements in paragraphs (b) through (d) of the section.

(2) The information required in paragraph (a)(1) of this section must be on file in the State, and be available for public review.

(b) *State definition of developmental delay.* The State must define developmental delay by—

(1) Describing, for each of the areas listed in § 303.16(a)(1), the procedures, including the use of informed clinical opinion, that will be used to measure a child's development; and

(2) Stating the levels of functioning or other criteria that constitute a developmental delay in each of those areas.

(c) *Diagnosed condition.* The State must describe the criteria and procedures, including the use of informed clinical opinion, that will be used to determine the existence of a condition that has a high probability of resulting in developmental delay under § 303.16(a)(2).

(d) *Children who are at risk.* If the State elects to include in its system children who are at risk under § 303.16(b), the State must describe the criteria and procedures, including the use of informed clinical opinion, that will be used to identify those children.

(Authority: 20 U.S.C. 1432(5), 1435(a)(1))

Note to § 303.300: Under this section and 303.322(c)(2), States are required to ensure that informed clinical opinion is used in determining a child's eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or if the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State's criteria could include percentiles or percentages of levels of functioning on standardized measures.

§ 303.301 Central directory.

(a) Each system must include a central directory of information about—

(1) Public and private early intervention services, resources, and experts available in the State;

(2) Research and demonstration projects being conducted in the State; and

(3) Professional and other groups (including parent support groups and advocate associations) that provide assistance to children eligible under this part and their families.

(b) The information required in paragraph (a) of this section must be in sufficient detail to—

(1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and

(2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory.

(c) The central directory must be—

(1) Updated at least annually; and

(2) Accessible to the general public.

(d) To meet the requirements in paragraph (c)(2) of this section, the lead agency must arrange for copies of the directory to be available—

(1) In each geographic region of the State, including rural areas; and

(2) In places and a manner that ensure accessibility by persons with disabilities.

Authority: 20 U.S C. 1435(a)(7))

§ 303.302 Service coordination.

(a) *General.* (1) Each system must ensure that service coordination is available to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program.

(2)(i) If a State has an existing service coordination system, the State may use or adapt that system, so long as it is consistent with the requirements of this part.

(ii) A public agency's use of the term service coordination is not intended to affect the agency's authority to seek reimbursement for services provided under Medicaid or any other legislation that makes reference to case management services.

(b) *Entitlement to service coordination.* (1) Each eligible child and the child's family must be provided with one service coordinator who is responsible for—

(i) Coordinating all services across agency lines; and

(ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need.

(2) In accordance with paragraphs (b)(1), (c), and (d) of this section, service coordination is an on-going, coordinative process designed to facilitate and enhance the delivery of early intervention services under this part. Therefore, service coordination is not required to be included in the statement of services under § 303.344(d)(1).

(c) *Scope of service coordination.* Service coordination is an active, ongoing process that involves—

(1) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;

(2) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;

(3) Facilitating the timely delivery of available services; and

(4) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.

(d) *Specific service coordination activities.* Service coordination activities include—

(1) Coordinating the performance of evaluations and assessments;

(2) Facilitating and participating in the development, review, and evaluation of IFSPs;

(3) Assisting families in identifying available service providers;

(4) Coordinating and monitoring the delivery of available services;

(5) Informing families of the availability of advocacy services;

(6) Coordinating with medical and health providers;

(7) Facilitating the development of a transition plan to preschool services, if appropriate; and

(8) At the discretion of the State, assisting families—

(i) To understand the sources of financing early intervention services, including public and private insurance programs, and how to access those sources; and

(ii) To be knowledgeable about any potential long-term costs involved in accessing the sources described in paragraph (d)(8)(i) of this section, and how to minimize those costs.

(e) *Employment and assignment of service coordinators.* (1) Service coordinators may be employed or assigned in any way that is permitted under State law, so long as it is consistent with the requirements of this part.

(2) A State's policies and procedures for implementing the statewide system of early intervention services must be designed and implemented to ensure that service coordinators are able to effectively carry out on an interagency basis the functions and services listed under paragraphs (a) and (b) of this section.

(f) *Qualifications of service coordinators.* Service coordinators must be persons who, consistent with § 303.344(h), have demonstrated knowledge and understanding about—

(1) Infants and toddlers who are eligible under this part;

(2) Part C of the Act and the regulations in this part; and

(3) The nature and scope of services available under the State's early intervention program, the system of payments for services in the State, and other pertinent information.

(Authority: 20 U.S.C. 1432(4); 14353(a)(4), 1436(d)(7), H.R. Rep. No. 198, 102d Cong., 1st Sess. 12 (1991); S. Rep. No. 84, 102d Cong., 1st Sess. 20 (1991).

Identification and Evaluation

§ 303.320 Public awareness program.

(a) Each system must include a public awareness program that—

(1) Focuses on the early identification of children who are eligible to receive early intervention services under this part; and

(2) Includes—

(i) The preparation by the lead agency of information for parents on the availability of early intervention services under this part, and how to access those services; and

(ii)(A) The agency's dissemination of the information to all primary referral sources identified in § 303.321(d)(3) (especially physicians and hospitals) for their use in providing the information to parents of infants and toddlers; and

(B) Procedures for determining the extent to which the primary referral sources disseminate the information to the parents.

(b) The public awareness program must provide for informing the public about—

(1) The State's early intervention program;

(2) The child find system, including—

(i) The purpose and scope of the system;

(ii) How to make referrals; and

(iii) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and

(3) The central directory.

(Authority: 20 U.S.C. 1435(a)(6))

Note 1 to § 303.320: An effective public awareness program is one that does the following:

Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas;

Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations;

Has coverage broad enough to reach the general public, including those who have disabilities; and

Includes a variety of methods for informing the public about the provisions of this part.

Note 2 to § 303.320: Examples of methods for informing the general public about the provisions of this part include: use of television, radio, and newspaper releases, pamphlets and posters displayed in physicians' offices, hospitals, and other appropriate locations, and the use of a toll-free telephone service.

§ 303.321 Comprehensive child find system.

(a) *General.* (1) Each system must include a comprehensive child find system that is consistent with part B of the Act (see 34 CFR 300.125), and meets the requirements of paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, must be responsible for implementing the child find system.

(b) *Policies and procedures.* The child find system must include the policies and procedures that the State will follow to ensure that—

(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated, including children with disabilities from—

(i) Traditionally underserved groups, including minority, low-income, inner-city, and rural families; and

(ii) Highly mobile groups (such as migrant and homeless families); and

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services.

(c) *Coordination.* (1) The lead agency, with the assistance of the Council, must ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, tribes and tribal organizations that receive payments under this part, and other tribes and tribal organizations as appropriate, including efforts in the—

(i) Program authorized under part B of the Act;

(ii) Maternal and Child Health program under title V of the Social Security Act;

(iii) Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under title XIX of the Social Security Act;

(iv) Developmental Disabilities Assistance and Bill of Rights Act;

(v) Head Start Act; and

(vi) Supplemental Security Income program under title XVI of the Social Security Act.

(2) The lead agency, with the advice and assistance of the Council, must take steps to ensure that—

(i) There will not be unnecessary duplication of effort by the various agencies involved in the State's child find system under this part; and

(ii) The State will make use of the resources available through each public agency in the State to implement the child find system in an effective manner.

(d) *Referral procedures.* (1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for—

(i) Evaluation and assessment, in accordance with §§ 303.322 and 303.323; or

(ii) As appropriate, the provision of services, in accordance with § 303.342(a) or § 303.345.

(2) The procedures required in paragraph (b)(1) of this section must—

(i) Provide for an effective method of making referrals by primary referral sources;

(ii) Ensure that referrals are made as soon as reasonably possible after a child has been identified; and

(iii) Include, in accordance with § 303.320(a)(2)(ii)(B), procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate information on the availability of early intervention services to parents of infants and toddlers.

(3) As used in paragraph (d)(1) of this section, primary referral sources includes, if appropriate—

(i) Hospitals, including prenatal and postnatal care facilities;

(ii) Physicians;

(iii) Parents;

(iv) Day care and child care programs;

(v) Local educational agencies;

(vi) Public health facilities;

(vii) Other social service agencies;

(viii) Other health care providers; and

(ix) Other Federally funded programs such as Head Start, Early Head Start, and Even Start.

(e) *Timelines for public agencies to act on referrals.* (1) Once the public agency receives a referral, it must appoint a service coordinator as soon as possible.

(2) Within 45 days after it receives a referral, the public agency must—

(i) Complete the evaluation and assessment activities in § 303.322; and

(ii) Hold an IFSP meeting, in accordance with § 303.342.

(Authority: 20 U.S.C. 1431(a)(5), 1432(4)(E)(vii), 1435(a)(5))

Note to § 303.321: In developing the child find system under this part, States should consider tracking systems based on high-risk conditions at birth, and other activities that are being conducted by various agencies or organizations in the State.

§ 303.322 Evaluation and assessment.

(a) *General.* (1) Each system must include the performance of—

(i) A timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation; and

(ii) A family-directed identification of the needs of each child's family to appropriately assist in the development of the child, that meets the requirements of paragraph (d) of this section.

(2) The lead agency must be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.

(b) *Definitions of evaluation and assessment.* As used in this part—

(1) Evaluation means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of "infants and toddlers with disabilities" in § 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.

(2) Assessment means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify—

(i) The child's unique strengths and needs and the services appropriate to meet those needs; and

(ii) The resources, priorities, and concerns of the family, and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

(c) *Evaluation and assessment of the child.* The evaluation and assessment of each child must—

(1) Be conducted by personnel trained to utilize appropriate methods and procedures;

(2) Be based on informed clinical opinion; and

(3) Include the following:

(i) A review of pertinent records related to the child's current health status and medical history.

(ii) An evaluation of the child's level of functioning in each of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Communication development.

(D) Social or emotional development.

(E) Adaptive development.

(iii) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs.

(d) *Family assessment.* (1) Family assessments under this part must be family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

(2) Any assessment that is conducted must be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment must—

(i) Be conducted by personnel trained to utilize appropriate methods and procedures;

(ii) Be based on information provided by the family through a personal interview; and

(iii) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development.

(e) *Timelines.* (1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in § 303.321(e).

(2) The lead agency must develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (*e.g.*, if a child is ill), public agencies will—

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345(b)(1) and (b)(2).

(Authority: 20 U.S.C. 1435(a)(3); 1436(a)(1), (a)(2), (d)(1), and (d)(2))

§ 303.323 Nondiscriminatory procedures.

Each lead agency must adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part must ensure, at a minimum, that—

(a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;

(b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;

(c) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and

(d) Evaluations and assessments are conducted by qualified personnel.

(Authority: 20 U.S.C. 1435(a)(3); 1436(a)(1), (d)(2), and (d)(3))

Individualized Family Service Plans (IFSPs)

§ 303.340 Definition of IFSP; lead agency responsibility.

(a) *Definition of IFSP.* As used in this part, individualized family service plan and IFSP mean a written plan for providing early intervention services to a child eligible under this part and the child's family that—

(1) Is developed by the child's IFSP team, in accordance with §§ 303.341 through 303.343;

(2) Is based on the evaluation and assessment described in § 303.322; and

(3) Includes the information required in § 303.344, as determined by the IFSP team.

(b) *Lead agency responsibility.* The lead agency in each State must ensure that—

(1) The State's early intervention system under this part has in effect policies and procedures on IFSPs that meet the requirements of this section and §§ 303.341 through 303.346; and

(2)(i) An IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part.

(ii) If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency must resolve the dispute or assign responsibility.

(Authority: 20 U.S.C. 1436)

Note to § 303.340: In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single consolidated document, provided that it contains all of the required information in § 303.344, and is developed in accordance with the requirements of this part.

§ 303.341 Policies and procedures on natural environments.

(a) *General.* Each system must have in effect, in accordance with paragraphs (b) through (d) of this section, policies and procedures to ensure that—

(1) To the maximum extent appropriate, early intervention services are provided in natural environments; and

(2) The provision of early intervention services for each eligible child occurs in a setting other than a natural environment only if the IFSP team, based on the evaluation and assessment required in § 303.322 and the information required in § 303.344(a) through (c), determines that early intervention cannot be achieved satisfactorily for the child in a natural environment.

(b) *Determination of natural environment for each IFSP service.* (1) The IFSP team for each eligible child under this part must determine, for each early intervention service to be provided to the child, if the child's needs can be met in a natural environment.

(2) If, after making the determinations required by paragraph (b)(1) of this section, the team determines that a specific service for the child must be provided in a setting other than a natural environment (such as in a center-based program that serves children with disabilities, or another setting appropriate to the age and needs of the child), a justification that meets the requirements of paragraph (c) of this section must be included in the child's IFSP.

(c) *Justification.* The justification required in paragraph (b)(2) of this section must—

(1) Include a statement describing the basis of the IFSP team's decision to provide a specific early intervention service for the child in a setting other than a natural environment;

(2) Be based on the identified needs of the child and the projected outcomes, as determined by the evaluation and assessment required in § 303.322 and the information required in § 303.344(a) through (c); and

(3) If appropriate, be based on the nature of the service required to meet the unique needs of the child.

(d) *Services to parents or other family members.* The provisions on natural environments in this part do not apply to services listed in an IFSP that are intended to meet the needs of the parents or other family members and not the needs of the child (*e.g.*, participation of a parent in a parent-support program).

(Authority: 20 U.S.C. 1435(a)(4), (a)(16), 1436(d)(5))

§ 303.342 Development, review, and revision of IFSPs.

(a) *Development of IFSP.* (1) *General.* For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP for the child must be conducted within the 45-day time period required in § 303.321(e).

(2) *Consideration of special factors.* In developing each child's IFSP, the IFSP team must—

(i) In the case of a child whose behavior impedes his or her development, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) In the case of a child of a family with limited English proficiency, consider the language needs of the child and the family as those needs relate to the child's IFSP;

(iii) In the case of a child who is blind or visually impaired, if appropriate, provide for exposing the child to pre-literacy or readiness activities related to the use of Braille (*e.g.,* through tactile stimulation and the use of "raised" picture books);

(iv) Consider the communication needs of the child, and, in the case of a child who is deaf or hard of hearing, consider—

(A) The appropriateness of oral stimulation and language-development activities; and

(B) Opportunities for direct communication with peers, professional personnel, and deaf adults in the child's language and communication mode, consistent with the developmental level of the child; and

(v) Consider whether the child requires assistive technology devices and services.

(b) *Periodic review.* (1) A review of the IFSP for each eligible child and the child's family must be conducted every six months, or more frequently if conditions warrant or if the family requests a review.

(2) The purpose of the periodic review is to determine—

(i) The degree to which progress toward achieving the outcomes is being made; and

(ii) Whether modification or revision of the outcomes or services is necessary.

(3) The review may be carried out in a meeting or by another means that is acceptable to the parents and other participants.

(c) *Annual meeting to evaluate the IFSP.* (1) A meeting must be conducted on at least an annual basis to evaluate the IFSP for each eligible child and the child's family, and, as appropriate, to revise its provisions.

(2) The results of any current evaluations conducted under § 303.322(c), and other information available from the ongoing assessment of the child and family, are used at the meeting in determining what services are needed and will be provided.

(d) *Accessibility and convenience of meetings.* (1) IFSP meetings must be conducted—

(i) In settings and at times that are convenient to families; and

(ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so; and

(2) Meeting arrangements are made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(e) *Parental consent before providing services.* The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided.

(Authority: 20 U.S.C. 1436)

Note to § 303.342: The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (*i.e.*, six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise.

Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation or assessment procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section.

§ 303.343 IFSP team—meetings and periodic reviews.

(a) *Initial and annual IFSP meetings.* (1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

(i) The parent or parents of the child.

(ii) Other family members, as requested by the parent, if feasible to do so.

(iii) An advocate or person outside of the family, if the parent requests that the person participate.

(iv) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for implementation of the IFSP.

(v) A person or persons directly involved in conducting the evaluations and assessments in § 303.322.

(vi) As appropriate, persons who will be providing services to the child or family.

(2) If a person listed in paragraph (a)(1)(v) of this section (who has been directly involved in conducting evaluations or assessments) is unable to attend an IFSP meeting, the public agency must take steps to ensure—

(i) The person's involvement through other means (*e.g.*, participating in a telephone conference call); or

(ii) That the results of the evaluations and assessments are appropriately interpreted at the meeting, by making pertinent records available at the meeting, and having a person attend the meeting who is qualified to interpret the evaluation and assessment results and their service implications (who may be one of the participants described in paragraphs (a)(1)(i) through (a)(1)(vi) of this section).

(b) *Periodic reviews.* Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

(Authority: 20 U.S.C. 1436(b))

§ 303.344 Content of IFSP.

(a) *Information about child's status.* (1) The IFSP must include a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development.

(2) The statement required in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

(b) *Family information.* (1) With the concurrence of the family, the IFSP must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child.

(2) The statement required in paragraph (b)(1) of this section must be based on the family assessment conducted under § 303.322(d).

(c) *Outcomes.* The IFSP must include a statement of the major outcomes expected to be achieved for the child and family (based on the evaluation and assessments required in § 303.322(c) and (d)), and the criteria, procedures, and timelines used to determine—

(1) The degree to which progress toward achieving the outcomes is being made; and

(2) Whether modifications or revisions of the outcomes or services are necessary.

(d) *Early intervention services.* (1) *Statement of services.* The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section. The statement must include the information required in paragraphs (d)(2) through (d)(4) of this section.

(2) *Frequency, intensity, and method.* (i) The IFSP must specify the frequency, intensity, and method of delivering each early intervention service.

(ii) As used in paragraph (d)(2)(i) of this section—

(A) Frequency and intensity mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and

(B) Method means how a service is provided.

(3) *Natural environments—location of services.* In accordance with § 303.341, the IFSP must—

(i) Specify the natural environments (locations or settings) where each early intervention service will be provided; and

(ii) Include a justification of the extent, if any, to which each service will not be provided in a natural environment.

(4) *Payment arrangements.* The IFSP must include a statement of the payment arrangements, if any, for each early intervention service.

(e) *Evaluations and assessments.* Except as provided in paragraph § 303.345, evaluations and assessments required under § 303.322 (including evaluations in each of the developmental areas in § 303.322(c)(3)(ii), and those described under the applicable early intervention services definitions in § 303.12(b)) must be completed prior to, and in preparation for, conducting the IFSP meeting for an eligible child under this part. Therefore, conducting those evaluations and assessments may not be listed as an early intervention service in the IFSP.

(f) *Other services.* (1) To the extent appropriate, the IFSP must include—

(i) Medical and other services that the child needs, but that are not required under this part; and

(ii) The funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.

(2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (*e.g.*, immunizations and "well-baby" and care), unless a child needs those services and the services are not otherwise available or being provided.

(g) *Dates; duration of services.* The IFSP must include—

(1) The projected dates for initiation of the services in paragraph (d)(1) of this section as soon as possible after the IFSP meetings described in § 303.342; and

(2) The anticipated duration of those services.

(h) *Service coordinator.* (1) The IFSP must include the name of the service coordinator from the profession most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (h)(1) of this section, the public agency may—

(i) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP; or

(ii) Appoint a new service coordinator.

(3) As used in paragraph (h)(1) of this section, the term profession includes "service coordination."

(i) *Transition from Part C services.* (1) The IFSP must include the steps to be taken to support the transition of the child, in accordance with § 303.148, to—

(i) Preschool services under Part B of the Act, to the extent that those services are appropriate; or

(ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (i)(1) of this section include—

(i) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;

(ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;

(iii)(A) The transmission of information about the child to the LEA or other relevant agency, in accordance with § 303.148(c); and

(B) The holding of the conference in accordance with § 303.148(d); and

(iv) Other activities that the IFSP team determines are necessary to support the transition of the child.

(Authority: 20 U.S.C. 1436(d))

Note 1 to § 303.344: With respect to the requirements in paragraph (e) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, early intervention services must be provided in natural environments (*e.g.*, the home, childcare centers, or other community settings) to the maximum extent appropriate to the needs of the child.

Note 2 to § 303.344: Throughout the process of developing and implementing IFSPs for an eligible child and the child's family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child's development. It also is important that the degree to which the needs of the family are addressed in the IFSP process is determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

Note 3 to § 303.344: The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with § 303.12. However, the "other services" in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that those services must be provided, their identification can be helpful to both the child's family and the service coordinator, for the following reasons: First, the IFSP would provide a comprehensive picture of the child's total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the service coordinator to assist the family in securing the non-required services (*e.g.*, by determining if there is a public agency that could provide financial assistance, if needed, assisting in the preparation of eligibility claims or insurance claims, if needed, and assisting the family in seeking out and arranging for the child to receive the needed medical-health services).

Thus, to the extent appropriate, it is important for a State's procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining who will provide each service, and when, where, and how it will be provided, and how the service will be paid for (*e.g.*, through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).

Note 4 to § 303.344: Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about what services are to be provided, the actions that are to be taken by the service coordinator in initiating those services, and what actions will be taken by the parents.

§ 303.345 Provision of services before evaluation and assessment are completed.

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in § 303.322, if the following conditions are met:

(a) Parental consent is obtained.

(b) An interim IFSP is developed that includes—

(1) The name of the service coordinator who will be responsible, consistent with § 303.344 (h), for implementation of the interim IFSP and coordination with other agencies and persons; and

(2) The early intervention services that have been determined to be needed immediately by the child and the child's family.

(c) The evaluation and assessment are completed within the time period required in § 303.322(e), except under exceptional circumstances as provided in § 303.322(e)(2).

(Authority: 20 U.S.C. 1436(c))

Note to § 303.345: This section is intended to accomplish two specific purposes: to facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (*e.g.*, a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible), and to ensure that the requirements for the timely evaluation and assessment are not circumvented.

§ 303.346 Responsibility and accountability.

Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, part C of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

(Authority: 20 U.S.C. 1436)

Personnel Training and Standards

§ 303.360 Comprehensive system of personnel development (CSPD).

(a) *General CSPD requirements.* Each system must include a comprehensive system of personnel development that—

(1) Is consistent with the comprehensive system of personnel development required under Part B of the Act and its implementing regulations (section 612(a)(14), and 34 CFR 300.380 through 300.382); and

(2) Meets the requirements in paragraphs (b) and (c) of this section.

(b) *Scope of training.* The comprehensive system of personnel development under this part must—

(1) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate;

(2) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as service coordinators; and

(3) Ensure that the training provided relates specifically to—

(i) Understanding the basic components of early intervention services available in the State;

(ii) Meeting the interrelated social or emotional, health, developmental, and educational needs of eligible children under this part; and

(iii) Assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSPs.

(c) *Authorized activities.* A personnel development system under this part may include—

(1) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;

(2) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

(3) Training personnel to work in rural and inner-city areas; and

(4) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program under this part to a preschool program under part B of the Act, or to other preschool or other appropriate services.

(Authority: 20 U.S.C. 1435(a)(8))

§ 303.361 Personnel standards.

(a) *Definitions.* As used in this part—

(1) *Appropriate professional requirements in the State* means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and

(ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families who are served by State, local, and private agencies.

(2) *Highest requirements in the State applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) *Profession* or *discipline* means a specific occupational category that—

(i) Provides early intervention services to children eligible under this part and their families;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) *State approved or recognized certification, licensing, registration,* or *other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b) *Policies and procedures.* (1)(i) Each system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(ii) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.

(2) Each State may—

(i) Determine the specific occupational categories required to provide early intervention services within the State; and

(ii) Revise or expand those categories as needed.

(3) Nothing in this part requires a State to establish a specified training standard (*e.g.*, a masters degree) for

personnel who provide early intervention services under Part C of the Act.

(4) A State with only one entry-level academic degree for employment of personnel in a specific profession or discipline may modify that standard, as necessary, to ensure the provision of early intervention services without violating the requirements of this section.

(c) *Steps for retraining or hiring personnel.* To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State's application for assistance under this part must include—

(1) The steps the State is taking;

(2) The procedures for notifying public agencies and personnel of those steps; and

(3) The timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(d) *Status of personnel standards in the State.* (1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.

(e) *Applicability of State statutes and agency rules.* In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.

(f) *Use of paraprofessionals and assistants.* A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, to assist in the provision of early intervention services to eligible children under this part.

(g) *Policy to address shortage of personnel.* (1) In implementing this section, a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to eligible children, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law, within three years.

(2) If a State has reached its established timelines in paragraph (c) of this section, the State may still exercise the option under paragraph (g)(1) of this section for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the State.

(3)(i) Each State must have a mechanism for serving eligible children under this part if the need for early intervention services exceeds appropriate professional requirements in the State for a specific profession or discipline.

(ii) A State that continues to experience shortages of qualified personnel must address those shortages in its comprehensive system of personnel development under § 303.361.

(Authority: 20 U.S.C. 1435(a)(9))

Subpart E—Procedural Safeguards

General

§ 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency must be responsible for—

(a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and

(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

(Authority: 20 U.S.C. 1439)

§ 303.401 Definitions of consent, native language, and personally identifiable information.

As used in this subpart—

(a) *Consent* means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3)(i) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(ii) If a parent revokes consent, that revocation is not retroactive (*i.e.*, it does not negate an action that has occurred after the consent was given and before the consent was revoked);

(b) *Native language,* if used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part; and

(c) *Personally identifiable* means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's or parent's social security number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1439)

§ 303.402 Opportunity to examine records.

In accordance with the confidentiality procedures in the regulations under part B of the Act (34 CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, due process hearings, and any other area under this part involving records about the child and the child's family.

(Authority: 20 U.S.C. 1439(a)(4))

§ 303.403 Prior notice; native language.

(a) *General.* Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) *Content of notice.* The notice must be in sufficient detail to inform the parents about—

(1) The action that is being proposed or refused;

(2) The reasons for taking the action;

(3) All procedural safeguards that are available under §§ 303.401 through 303.460 of this part; and

(4) The State complaint procedures under §§ 303.510–303.512, including a description of how to file a complaint

and the timelines under those procedures.

(c) *Native language.* (1) The notice must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, must take steps to ensure that—

(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(ii) The parent understands the notice; and

(iii) There is written evidence that the requirements of this paragraph have been met.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1439(a)(6) and (7))

§ 303.404 Parent consent.

(a) Written parental consent must be obtained before—

(1) Conducting the initial evaluation and assessment of a child under § 303.322; and

(2) Initiating the provision of early intervention services (see § 303.342(e)).

(b) If consent is not given, the public agency must make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(Authority: 20 U.S.C. 1439)

Note 1 to § 303.404: In addition to the consent requirements in this section, other consent requirements are included in § 303.460(a), regarding the exchange of personally identifiable information among agencies, and the confidentiality provisions in the regulations under part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part.

Note 2 to § 303.404: Under § 300.505(b) of the Part B regulations, a public agency may initiate procedures to challenge a parent's refusal to consent to the initial evaluation of the parent's child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.

§ 303.405 Parent right to decline service.

The parents of a child eligible under this part—

(a) May determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law; and

(b) May decline such a service after first accepting it, without jeopardizing other early intervention services under this part.

(Authority: 20 U.S.C. 1439(a)(3))

§ 303.406 Surrogate parents.

(a) *General.* Each lead agency must ensure that the rights of children eligible under this part are protected if—

(1) No parent (as defined in § 303.19) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of lead agency and other public agencies.* The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for—

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

(c) *Criteria for selecting surrogates.* (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent—

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate parent may not be—

(i) An employee of any State agency; or

(ii) A person or an employee of a person providing early intervention services to the child or to any family member of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) *Responsibilities.* A surrogate parent may represent a child in all matters related to—

(1) The evaluation and assessment of the child;

(2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(3) The ongoing provision of early intervention services to the child; and

(4) Any other rights established under this part.

(Authority: 20 U.S.C. 1439(a)(5))

Mediation and Due Process Procedures for Parents and Children

§ 303.419 Mediation.

(a) *General.* (1) Each State must ensure that procedures are established and implemented to allow parties to disputes involving any matter described in § 303.403(a) to resolve the disputes through a mediation process that, at a minimum, must be available whenever a hearing is requested under § 303.420.

(2) The lead agency may either use the mediation system established under Part B of the Act or establish its own system.

(b) *Requirements.* The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a due process hearing under § 303.420, or to deny any other rights afforded under Part C of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(3) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (c) of this section.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) *Meeting to encourage mediation.* A State may establish procedures to require parents who elect not to use the

mediation process to meet, at a time and location convenient to the parents, with a disinterested party—

(1) Who is under contract with a parent training and information center or community parent resource center in the State established under sections 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and

(2) Who would explain the benefits of the mediation process and encourage the parents to use the process.

(Authority: 20 U.S.C. 1415(e) and 1439(a)(8))

§ 303.420 Due process procedures.

(a) Each system must include written procedures for the timely administrative resolution of requests for due process hearings filed by the parents of eligible children under this part concerning any of the matters described in § 303.403(a). A State may meet this requirement by—

(1)(i) Adopting the mediation and due process procedures in 34 CFR 300.506–300.512; and

(ii) Developing procedures that meet the requirements of § 303.425; or

(2) Developing procedures that—

(i) Meet the mediation and due process requirements in § 303.419 and §§ 303.421–303.425; and

(ii) Provide parents an appropriate means of filing a request for a due process hearing.

(b) If a parent initiates a hearing under paragraph (a)(1) or (a)(2) of this section, the lead agency must inform the parent of the availability of mediation described in § 303.419.

(Authority: 20 U.S.C. 1439(a)(1), (8))

Note to § 303.420: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.

§ 303.421 Impartial hearing officer.

(a) *Qualifications and duties.* Each lead agency must ensure that any due process hearings carried out under section 639 of the Act and subpart E of this part are conducted by an impartial hearing officer who—

(1) Has knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and

(2) Performs the following duties:

(i) Listens to the presentation of relevant viewpoints about the dispute that is the subject of the hearing.

(ii) Examines all information relevant to the issues.

(iii) Seeks to reach a timely resolution of the dispute.

(iv) Provides a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) As used in this section, impartial means that a person who serves as a hearing officer in accordance with this section—

(i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(Authority: 20 U.S.C. 1439(a)(1))

§ 303.422 Parent rights in due process hearings.

(a) *General.* Each lead agency must ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any due process hearing carried out under § 303.420.

(b) *Rights.* Any parent involved in a due process hearing has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(Authority: 20 U.S.C. 1439)

§ 303.423 Convenience of hearings; timelines. Each lead agency must ensure that—

(a) Any due process hearing conducted under this part is carried out at a time and place that is reasonably convenient to the parents; and

(b) Not later than 30 days after the receipt of a parent's request for a due process hearing, the hearing is conducted and a written decision is mailed to each of the parties.

(Authority: 20 U.S.C. 1439(a)(1))

Note: Under part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (*i.e.*, within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (*See* 34 CFR 300.512.) Thus, if a State, in meeting the requirements of § 303.420, elects to adopt the due process procedures under part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth-through-two-age range change so rapidly, quick resolution of complaints is important.

§ 303.424 Civil action.

Any party aggrieved by the findings and decision made under § 303.420 has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.

(Authority: 20 U.S.C. 1439(a)(1))

§ 303.425 Status of a child during proceedings.

(a) During the pendency of any administrative or judicial proceeding involving a request for a due process hearing under § 303.420, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the proceeding involves an application for initial services under this part, the child must receive those services that are not in dispute.

(c) This section does not apply if a child is transitioning from early intervention services under this part to preschool services under Part B of the Act.

(Authority: 20 U.S.C. 1439(a)(7))

Confidentiality

§ 303.460 Confidentiality of information.

(a) Each State must adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560–300.576, with the modifications specified in § 303.5(b).

(Authority: 20 U.S.C. 1439(a)(2), 1442)

Note to § 303.460: With the modifications referred to in paragraph (b) of this section, the confidentiality requirements in the regulations implementing part B of the Act (34 CFR 300.560 through 300.576) are to be

used by public agencies to meet the confidentiality requirements under part C of the Act and this section (§ 303.460).

The part B provisions incorporate by reference the regulations in 34 CFR part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.

Subpart F—State Administration

General

§ 303.500 Lead agency establishment or designation.

Each system must include a single line of responsibility in a lead agency that—

(a) Is established or designated by the Governor; and

(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

(Authority: 20 U.S.C. 1435(a)(10))

§ 303.501 Supervision and monitoring of programs.

(a) *General.* Each lead agency is responsible for—

(1) The general administration and supervision of programs and activities receiving assistance under this part; and

(2) The monitoring of programs and activities used by the State to carry out this part, whether or not these programs or activities are receiving assistance under this part, to ensure that the State complies with this part.

(b) *Methods of ensuring compliance.* In meeting the requirement in paragraph (a) of this section, the lead agency must adopt and use proper methods of ensuring compliance, including—

(1) Monitoring agencies, institutions, and organizations used by the State to carry out this part;

(2) Enforcing any obligations imposed on those agencies under part C of the Act and these regulations;

(3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and

(4) Correcting deficiencies that are identified through monitoring.

(Authority: 20 U.S.C. 1435(a)(10)(A))

Lead Agency Procedures for Resolving Complaints

§ 303.510 Adopting complaint procedures.

(a) *General.* Each lead agency must adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that any public agency or private service provider is violating a requirement of Part C of the Act or this part by—

(i) Providing for the filing of a complaint with the lead agency; and

(ii) At the lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§ 303.510 through 303.512.

(b) *Remedies for denial of appropriate services.* In resolving a complaint in which it finds a failure to provide appropriate services, a lead agency, pursuant to its general supervisory authority under Part C of the Act, must address:

(1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and

(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

(Authority: 20 U.S.C. 1435(a)(10))

§ 303.511 An organization or individual may file a complaint.

(a) *General.* An individual or organization may file a written signed complaint under § 303.510. The complaint must include—

(1) A statement that the State has violated a requirement of Part C of the Act or the regulations in this part; and

(2) The facts on which the complaint is based.

(b) *Limitations.* The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency, unless a longer period is reasonable because—

(1) The alleged violation continues for that child or other children; or

(2) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.

(Authority: 20 U.S.C. 1435(a)(10))

§ 303.512 Minimum State complaint procedures.

(a) *Time limit—minimum procedures.* Each lead agency must include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under § 303.510(a) to—

(1) Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this Part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the lead agency's final decision.

(b) *Time extension; final decisions; implementation.* The lead agency's procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and

(2) Include procedures for effective implementation of the lead agency's final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) *Complaints filed under this section, and due process hearings under § 303.420.* (1) If a written complaint is received that is also the subject of a due process hearing under § 303.420, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60-calendar-day timeline using the complaint procedures described in paragraphs (a) and (b) of this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties—

(i) The hearing decision is binding; and

(ii) The lead agency must inform the complainant to that effect.

(3) A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the lead agency.

(Authority: 20 U.S.C. 1435(a)(10))

Policies and Procedures Related to Financial Matters

§ 303.519 Policies related to payment for services.

(a) *General.* (1) Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State's early intervention program.

(i) For a State that has adopted a system of payments, the policies must meet the requirements in §§ 303.519 through 303.522.

(ii) For a State that has not adopted a system of payments, the policies must—

(A) Include a statement that all early intervention services will be at no cost to parents; and

(B) Meet the requirements of this section and § 303.522.

(2) The policies required in paragraph (a)(1) of this section must be reflected in the appropriate interagency agreements required in § 303.523.

(b) *Procedures to ensure the timely provision of services.* The State must implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.

(c) *Proceeds from public or private insurance.* (1) Proceeds from public or private insurance are not treated as program income for purposes of 34 CFR 80.25.

(2) A State may add fees collected under a system of payments, which are program income under 34 CFR 80.25, to its Part C grant funds. The fee income must be used for the purposes and under the conditions of the grant agreement.

(3) If a public agency spends reimbursements from Federal funds (e.g., Medicaid), or uses private insurance payments for services under this part, those funds are not considered State or local funds for purposes of the provisions contained in § 303.124 (Prohibition against supplanting).

(d) *State policy relating to the use of Part B funds.* A State lead agency that proposes to use funds under Part B of the Act to provide services to any children eligible under this part must do so in accordance with a State policy that is in effect and meets the following requirements:

(1) Assures that—

(i) Any eligible child under this part who receives services using Part B funds will be provided a free appropriate public education in accordance with the requirements of Part B of the Act and its implementing regulations (34 CFR Part 300);

(ii) If the State uses funds received under section 611 of IDEA to provide services to eligible infants and toddlers, the State will meet the requirements of both Parts B and C of the Act and their implementing regulations for those children; and

(iii) If the State uses funds received under section 619 of IDEA to provide services to two-year-olds who will turn three during the school year, the State will meet the requirements of Part B for those children, and is not required to comply with Part C.

(2) Specifies what category, age group, or other segment of the eligible infant and toddler population will receive services with funds under Part B of the Act, and, therefore, are entitled to a free appropriate public education.

(e) *Construction.* Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations, or policy under title XIX, or title XXI of the Social Security Act, or any other Federal insurance program.

(Authority: 20 U.S.C. 1411, 1419(a), (h), 1432(4)(B), 1435(a)(10))

§ 303.520 System of payments.

(a) *General.* (1) A system of payments is a written State policy that—

(i) Meets the requirements of this section; and

(ii) Describes the fees or costs that will be borne by families who receive services under the early intervention system.

(2) The lead agency is responsible for ensuring compliance with the system of payments.

(b) *Types of fees.* A system of payments may include either or both of the following:

(1) A fee system of payments by families established under State law specifically for early intervention services, such as a schedule of sliding fees based on family income.

(2) Cost participation fees (e.g., co-pay or deductible amounts) required under existing State or Federal law to access State or Federal insurance programs in which the child or family is enrolled.

(c) *System of payments—assurance.* A State with a system of payments must assure that no fees will be charged to parents in the following circumstances:

(1) *Functions and services at no cost.* The State must carry out the following functions and services at public expense:

(i) Implementing the child find requirements in § 303.321.

(ii) Evaluation and assessment, as required in § 303.322, and including the functions related to evaluation and assessment in § 303.12.

(iii) Service coordination, as included in §§ 303.302 and 303.344(h).

(iv) Administrative and coordinative activities related to—

(A) The development, review, and evaluation of IFSPs in §§ 303.340 through 303.346;

(B) Implementation of the procedural safeguards in subpart E of this part; and

(C) The other components of the statewide system of early intervention services in subparts D and F of this part.

(2) *Inability to pay.* The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family.

(3) *Free appropriate public education and the use of Part B funds.* If a State has in effect a State policy that requires the provision of a free appropriate public education to children below age three, or uses Part B section 611 funds to provide early intervention services to eligible children below age three in accordance with § 303.519(d), the State—

(i) May not charge parents for any services that are part of free appropriate public education, as defined in 34 CFR 300.13, for the child; and

(ii) May, under a system of payments, charge parents for other services that are not covered under paragraph (c)(3)(i) of this section.

(d) *System of payments: State policies.* The policies of a State with a system of payments must—

(1) Include the assurance described in paragraph (c) of this section regarding the circumstances under which no fees may be charged;

(2) Specify which early intervention services are subject to the system of payments;

(3) Specify which types of fees or payments described in paragraph (b) of this section are included;

(4) Include the State's criteria for judging inability to pay, provided that, in considering a family's ability to pay, the State uses criteria that take into consideration applicable family expenses, using the best available data; and

(5) For States whose system includes fees for early intervention services as described in paragraph (b)(1) of this section, include—

(i) The schedule of fees that will be used, including the basis for and amount of fees; and

(ii) The basis for determining a family's position on the fee scale, if applicable, provided that the State—

(A) Does not take into account the existence of a family's public or private insurance; and

(B) Uses criteria that take into consideration applicable family expenses, using the best available data.

(e) *Procedural safeguards*—(1) *Notice.* In States with a system of payments, the State must give written notice to parents of the information required in this section.

(2) *How to give notice.* In order to give the notice required in paragraph (e)(1) of this section, a State may—

(i) Include the information in the notice the State gives the family under § 303.403; or

(ii) Create a separate notice for this information, and provide the notice to families prior to commencement of early intervention services for their child.

(3) *Redress by parents.* If a parent wishes to contest the imposition of a fee, or the State's determination of the family's ability to pay, the parent may do the following:

(i) Participate in mediation in accordance with § 303.419.

(ii) Request a due process hearing under § 303.420.

(iii) File a State complaint under § 303.510.

(iv) Use any other procedure established by the State for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights under this part, including the right to pursue, in a timely manner, the redress options described in paragraphs (e)(3)(i) through (iii) of this section.

(Authority: 20 U.S.C. 1432(4)(B), 1439((a)(1), (a)(8))

§ 303.521 Use of insurance.

(a) *Public insurance—No mandatory enrollment.* A State may not require parents to sign up for or enroll in a public insurance program in order for their child to receive early intervention services.

(b) *Use of public insurance.* (1)(i) A State may use the Medicaid or other public insurance benefits in which a child participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section.

(ii) The State may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a public insurance claim for services provided pursuant to this part, unless those expenses are included in a system of payments as described in § 303.520(b)(2); but pursuant to paragraph (e) of this section, the State may pay the cost that the parent otherwise would be required to pay.

(iii) The State may not use a child's benefits under a public insurance program without obtaining parental consent, if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public insurance program if not for the provision of services under this part;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for, or decrease in benefits under, home and community-based waivers, based on aggregate health-related expenditures.

(2) If any of the circumstances listed in paragraph (b)(1)(iii) of this section apply, the State may use the child's benefits, if it obtains the parent's written consent in accordance with § 303.401(a).

(3) If a family's public insurance program requires access to the family's private insurance as a precondition—

(i) The State may not require families to access their private insurance; and

(ii) The State may access the private insurance if parents give consent in accordance with paragraph (d) of this section, or choose to use private insurance under the provisions of paragraph (c) of this section.

(4) In a State with a system of payments that includes fees as described in § 303.520(b)(1), the State may not bill the family's public insurance for an amount greater than the cost of the service, after subtracting any applicable fee amount owed or paid by the family.

(c) *Use of private insurance—States with a fee scale for early intervention services.* In a State with a system of payments, if the system of payments includes fees as described in § 303.520(b)(1), the State must—

(1) First determine the applicable family fee for each service, in accordance with § 303.520(d)(5)(ii); and

(2) Give parents the option of using their private insurance, if any, or paying the applicable fee, for each service.

(d) *Use of private insurance—States with no system of payments.* (1)(i) Subject to paragraph (d)(1)(ii) of this section, the provisions in this paragraph apply in all States except a State with a system of payments that includes fees as described in § 303.520(b)(1), such as a sliding fee scale.

(ii) The provisions of this paragraph also apply to a State with a system of payments that includes fees as described in § 303.520(b)(1), such as a sliding fee scale, if any of the circumstances in § 303.520(c) are present (when no fees can be charged).

(2) The State may access a parent's private insurance only if the parent provides informed consent in accordance with § 303.401(a), following the procedures in paragraph (d)(3) of this section.

(3) For each service in the initial IFSP and each subsequent change to a service (including a change in the frequency and intensity of delivering the service), in order to access a family's private insurance to fund that service, the State must—

(i) Obtain parental consent, in accordance with § 303.401(a); and

(ii) Inform the parents that their refusal to permit the State to access their private insurance does not relieve the State of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) *Use of Part C funds.* (1) If a State is unable to obtain parental consent to use the parent's private insurance to pay for a service under this part, or public insurance if the parent would incur a cost for the service under paragraph (c)(4) of this section, the State may use its Part C funds to pay for the service.

(2) To avoid financial cost to parents, a State may use its Part C funds to pay the cost the parents otherwise would have to pay to use their public or private insurance (*e.g.,* the deductible or co-pay amounts).

(Authority: 20 U.S.C. 1432(4)(B), 1440)

§ 303.522 Identification and coordination of resources.

(a) Each lead agency is responsible for—

(1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and

(2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.

(b) The Federal funding sources in paragraph (a)(1) of this section include—

(1) Title V of the Social Security Act (relating to Maternal and Child Health);

(2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT);

(3) The Head Start Act;

(4) Parts B and C of the Act;

(5) The Developmental Disabilities Assistance and Bill of Rights Act (Pub. L. 94–103); and

(6) Other Federal programs.

(Authority: 20 U.S.C. 1435(a)(10)(B))

§ 303.523 Interagency agreements.

(a) *General.* Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved, whether by providing services or funding, in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) *Financial responsibility.* Each agreement must define the financial responsibility, in accordance with §§ 303.143 and 303.173, of the agency for paying for or providing early intervention services (in accordance with State law and the requirements of this part).

(c) *Procedures for resolving disputes.* (1) Each agreement must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(2) A State may meet the requirement in paragraph (c)(1) of this section in any way permitted under State law, including—

(i) Providing for a third party (*e.g.,*) an administrative law judge) to review a dispute and render a decision;

(ii) Assignment of the responsibility by the Governor to the lead agency or Council; or

(iii) Having the final decision made directly by the Governor.

(3) The agreement with each agency must—

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(d) *Additional components.* Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program, including provisions on—

(1) Transition from Part C services, in accordance with § 303.148(c);

(2) Applicable policies regarding payments by families, and the use of funds from other State agencies, in accordance with §§ 303.173, 303.519(a), and 303.522; and

(3) At the State's discretion, child find, consistent with § 303.321(c).

(Authority: 20 U.S.C. 1435(a)(10)(C) and (a)(10)(F))

§ 303.524 Resolution of disputes.

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in § 303.523(c)(2)(ii).

(b)(1) During a dispute, the individual or entity responsible for assigning financial responsibility among appropriate agencies under § 303.143 (*i.e.*, the financial designee) must assign financial responsibility to—

(i) An agency, subject to the provisions in paragraph (b)(2) of this section; or

(ii) The lead agency, in accordance with the payor of last resort provisions in § 303.527.

(2) If, during the lead agency's resolution of the dispute, the financial designee determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made—

(i) The financial designee must reassign the responsibility to the appropriate agency; and

(ii) The lead agency must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency must—

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures to ensure the delivery of services in a timely manner in accordance with § 303.525.

(Authority: 20 U.S.C. 1435(a)(10)(C) and (a)(10)(E))

§ 303.525 Delivery of services in a timely manner.

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

(Authority: 20 U.S.C. 1435(a)(10)(D))

§ 303.526 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include—

(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and

(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

(Authority: 20 U.S.C. 1435(a)(11))

Note to § 303.526: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and individuals meet the requirements of this part.

§ 303.527 Payor of last resort.

(a) *Nonsubstitution of funds.* Except as provided in paragraph (b)(1) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of part C of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.

(b) *Interim payments—reimbursement.* (1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(2) Payments under paragraph (b)(1) of this section may be made for—

(i) Early intervention services, as described in § 303.12;

(ii) Eligible health services (see § 303.13); and

(iii) Other functions and services authorized under this part, including child find and evaluation and assessment.

(3) The provisions of paragraph (b)(1) of this section do not apply to medical services or "well-baby" health care (see § 303.13(c)(1)).

(c) *Non-reduction of benefits.* Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (SSA) (relating to maternal and child health) or title XIX of the SSA (relating

to Medicaid for children eligible under this part) within the State.

(Authority: 20 U.S.C. 1440)

Note to § 303.527: The Congress intended that the enactment of part C not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs.

The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) an amendment to title XIX of the Social Security Act. That amendment states, in effect, that nothing in this title must be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) of section 1903 of the Social Security Act for medical assistance for covered services furnished to an infant or toddler with a disability because those services are included in the child's IFSP adopted pursuant to part C of the Act.

§ 303.528 Reimbursement procedure.

Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with § 303.527(b).

(Authority: 20 U.S.C. 1435(a)(12))

Reporting Requirements

§ 303.540 Data collection.

(a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must—

(1) Include a process for—

(i) Collecting data from various agencies and service providers in the State;

(ii) Making use of appropriate sampling methods, if sampling is permitted; and

(iii) Describing the sampling methods used, if reporting to the Secretary; and

(2) Provide for reporting data required under section 618 of the Act that relates to this part.

(b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.

(Authority: 20 U.S.C. 1435(a)(14))

Use of Funds for State Administration

§ 303.560 Use of funds for administration.

A lead agency may use funds under this part that are reasonable and necessary for administering the State's early intervention program for infants and toddlers with disabilities.

(Authority: 20 U.S.C. 1433, 1435(a)(10))

Subpart G—State Interagency Coordinating Council

General

§ 303.600 Establishment of Council.

(a) A State that desires to receive financial assistance under this part must establish a State Interagency Coordinating Council.

(b) The Council must be appointed by the Governor. The Governor must ensure that the membership of the Council reasonably represents the population of the State.

(c)(1) Subject to paragraph (c)(2) of this section, the Governor must designate a member of the Council to serve as the chairperson of the Council or require the Council to do so.

(2) Any member of the Council who is a representative of the lead agency designated under § 303.500 may not serve as the chairperson of the Council.

(Authority: 20 U.S.C. 1441(a))

Note to § 303.600: To avoid a potential conflict of interest, it is recommended that parent representatives who are selected to serve on the Council not be employees of any agency involved in providing early intervention services.

It is suggested that consideration be given to maintaining an appropriate balance between the urban and rural communities of the State.

§ 303.601 Composition.

(a) The Council must be composed as follows:

(1)(i) At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities.

(ii) At least one member must be a parent of an infant or toddler with a disability or a child with a disability aged six or younger.

(2) At least 20 percent of the members must be public or private providers of early intervention services.

(3) At least one member must be from the State legislature.

(4) At least one member must be involved in personnel preparation.

(5) At least one member must—

(i) Be from each of the State agencies involved in the provisions of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and

(ii) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.

(6) At least one member must—

(i) Be from the State educational agency responsible for preschool services to children with disabilities; and

(ii) Have sufficient authority to engage in policy planning and implementation on behalf of that agency.

(7) At least one member must be from the agency responsible for the State governance of health insurance.

(8) At least one member must be from a Head Start agency or program in the State.

(9) At least one member must be from a State agency responsible for child care.

(b) The Council may include other members selected by the Governor, including a representative from the BIA or, if there is no school operated or funded by the BIA, from the Indian Health Service or the tribe or tribal council.

(Authority: 20 U.S.C. 1441(b))

§ 303.602 Use of funds by the Council.

(a) *General.* Subject to the approval of the Governor, the Council may use funds under this part—

(1) To conduct hearings and forums;

(2) To reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives);

(3) To pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business;

(4) To hire staff; and

(5) To obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.

(b) *Compensation and expenses of Council members.* Except as provided in paragraph (a) of this section, Council members must serve without compensation from funds available under this part.

(Authority: 20 U.S.C. 1438, 1441 (c) and (d))

§ 303.603 Meetings.

(a) The Council must meet at least quarterly and in such places as it deems necessary.

(b) The meetings must—

(1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; and

(2) To the extent appropriate, be open and accessible to the general public.

(c) Interpreters for persons who are deaf and other necessary services must

be provided at Council meetings, both for Council members and participants. The Council may use funds under this part to pay for those services.

(Authority: 20 U.S.C. 1441 (c) and (d))

§ 303.604 Conflict of interest.

No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(Authority: 20 U.S.C. 1441(f))

Functions of the Council

§ 303.650 General.

(a) Each Council must—

(1) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(2) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;

(3) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes—

(i) Seeking information from service providers, service coordinators, parents, and others about any Federal, State, or local policies that impede timely service delivery; and

(ii) Taking steps to ensure that any policy problems identified under paragraph (a)(3)(i) of this section are resolved; and

(4) To the extent appropriate, assist the lead agency in the resolution of disputes.

(b) Each Council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to five, inclusive.

(c) Each Council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

(Authority: 20 U.S.C. 1441(e)(1)(A) and (e)(2))

§ 303.651 Advising and assisting the lead agency in its administrative duties.

Each Council must advise and assist the lead agency in the—

(a) Identification of sources of fiscal and other support for services for early intervention programs under this part;

(b) Assignment of financial responsibility to the appropriate agency; and

(c) Promotion of the interagency agreements under § 303.523.

(Authority: 20 U.S.C. 1441(e)(1)(A))

§ 303.652 Applications.

Each Council must advise and assist the lead agency in the preparation of applications under this part and amendments to those applications.

(Authority: 20 U.S.C. 1441(e)(1)(B))

§ 303.653 Transition services.

Each Council must advise and assist the State educational agency regarding the transition of eligible children under this part to preschool services under part B of the Act or other appropriate services.

(Authority: 20 U.S.C. 1441(e)(1)(C))

§ 303.654 Annual report to the Secretary.

(a) Each Council must—

(1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

(b) Each annual report must contain the information required by the Secretary for the year for which the report is made.

(Authority: 20 U.S.C. 1441(e)(1)(D))

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ATTACHMENT 1 —LIST OF PROPOSED CHANGES IN IDEA-PART C REGULATIONS

[Note: Attachment 1 will not be codified in the Code of Federal Regulations]

Sect. No.	Current Title	Changes [1]
	SUBPART A—GENERAL	
303.3	Activities that may be supported under this part.	(1) Change title to "Use of Part C funds;" and restructure the section to change pghs "(a)-(e)" to "(a)(1)-(a)(5)." (2) Add a new pgh (a)(6)--Assist families to understand sources of financing early intervention services, including public and private insurance programs... (3) Add a new pgh (b)(1) to clarify that Part C funds may not be used to pay costs of an action or proceeding under sec. 639 of the Act or subpart E of this part. (4) Add a new pgh (b)(2)--Re pgh (b)(1) does not preclude using Part C funds for conducting due process hearings (e.g., paying a hearing officer, and the cost of providing the parent a transcription of the hearing).
303.5	Applicable regulations.	(1) Amend pgh (a)(1) by adding references to other EDGAR regulations that apply (i.e., Parts 97-99). (2) Amend references to Part B Regs in pgh (a)(3), by -- (A) adding a reference to Part B due process hearing procedures in §§300.506-300.512; and (B) changing the citation for Department procedures from §§300.580-300.585 to §§300.580-300.587. (3) Delete pgh (b)(4) (citations are not applicable). (4) Renumber pgh (b)(5) as (b)(4); and correct the citation to read §303.127 ("Confidentiality. . ."). (5) Revise authority cite to include 20 U.S.C. 1442.
	Definitions	
--	"Note" preceding §303.6--List of terms defined in specific subparts.	♦ Delete "Location (§303.344(d)(3))" from the list of terms. (See changes to §303.344(d).)
303.9	Days (Definition).	(1) Change title to "Day; business day;" and state that "day" means calendar day, except for hearing rights in §300.509 of the Part B regulations (if a State, under §303.420(a)(1), adopts the Part B due process hearing procedures). (2) Define "business day" as Monday-Friday, except for Federal and State holidays.
303.10	Developmental delay.	♦ Replace "an individual" with "a child."

[1] This table includes all substantive and technical changes that are proposed in this NPRM, including changes that are made to provide clarity and guidance. However, the table generally does not include simple word changes (e.g., in §303.125, deleting "such;" replacing "assure" with "ensure," or correcting typographical errors.

Sect. No.	Current Title	Changes [1]
303.12	Early intervention services (EIS) (Definition).	(1) Change the order of items in pgh (a) to conform more closely to the Act; and further revise "(a)" to clarify that the term "EIS" means "developmental" services. (2) Delete pgh (b) (on natural environments), and move text to §303.18; move pgh (d) (Definitions of individual services) to pgh (b), and change introduction. (3) Clarify, in proposed pgh (a)(5), that the early intervention services listed in pgh (b) are subject to the exclusions on "health services" in §303.13(c). (4) Move pgh (c) (General role of service providers) to pgh (d). (5) Move pgh (e) (Qualified personnel) to pgh (c), and change the introduction.
303.12(d)(1)	Assistive technology (AT) (AT device & AT service). (Definitions under "EIS")	(1) Divide introduction into proposed pghs "(b)(1)(i)" for AT device, and "(b)(1)(ii)" for AT service, etc. (2) Revise AT service to clarify that the service directly Assists an eligible child and the child's parent in the Selection, acquisition, or use of an AT device for the Child.
303.12(d)(2)	Audiology (Definition under EIS).	(1) Change title to "Audiology services," as in the Act. (2) Replace "auditory impairment" with "hearing Loss," and add "Counseling & guidance of Children...," as in Part B.
303.12.(d)(3)	Family training, counseling, & home visits. (Definition under EIS)	♦ Add -- "special educators" to the list of EIS providers under the definition.
303.12(d)(6)	Nursing services (Definition under EIS)	♦ Move from "EIS" to "health services" (§303.13), and renumber the remaining services under EIS.
303.12(d)(8)	Occupational therapy (OT). (Definition under EIS)	(1) Renumber as pgh (b)(7). (2) Add, after "OT," "(i) Means services provided by a qualified occupational therapist, and (ii) Includes..."
303.12(d)(11)	Service coordination services. (Definition under EIS)	(1) Renumber as pgh (b)(10), and change title to "Service coordination." (2) Revise text by striking the phrase, "that are in addition to the functions and activities included under §303.23," and replacing it with "in accordance with §303.302."
303.12(d)(13)	Special instruction (Definition under EIS)	(1) Renumber as pgh (b)(12), and revise (b)(12)(i) by replacing "in a variety of developmental areas..." with a listing of all 5 developmental areas from the Act. (2) Revise pgh (a)(13)(ii), to provide clarifying language regarding "Planning that leads to achieving the outcomes in the child's IFSP..."

Sect. No.	Current Title	Changes [1]
303.12(d)(14)	Speech-language pathology (Definition under EIS).	(1) Renumber as pgh (b)(13), and add "services" to title, to conform to statute. (2) Replace "oropharyngeal" with "swallowing;" and (3) Add a new pgh (b)(13)(iv) Re -- "Counseling and Guidance of parents..."
--	Note following §303.12.	◆ Clarify that "qualified personnel" who provide EIS may include augmentative communication specialists and technology specialists.
303.13	Health Services.	(1) Add "Nursing services" (from §303.12(d)(6)) to the list of covered "health services" under §303.13 (b) (i.e., new pgh (b)(3)). (2) Add additional examples of services and devices not covered under "Health services" (§303.13(c)), as follows: ◆ To "services that are surgical in nature," add "the installation of devices such as pacemakers, cochlear implants, or prostheses." ◆ To "Devices necessary to control or treat a medical condition," add "or other condition (such as., pacemakers, cochlear implants, prostheses, or shunts)."
303.14	IFSP.	(1) Change title to "IFSP; IFSP team." (2) Designate "IFSP" definition as pgh (a), and change citation from §303.340(b) to "§303.340(a)." (3) Define "IFSP team" (in pgh (b)) as "the group of participants described in §303.343 that is responsible for..." developing, reviewing, and revising the IFSP.
303.18	Natural environments.	◆ Change §303.18 to "§303.18(a);" and add language on natural environments from §303.12(b) as proposed §303.18(b).
303.19	Parent.	◆ In pgh (a)(2), after "A guardian," add ", but not the State if the child is a ward of the State." (This was inadvertenly omitted in 1998-99 Regs)
303.22	Qualified.	◆ Change title to "Qualified personnel," and conform to Part B defitition.
303.23	Service coordination (case management).	◆ Move text of definition to new §303.302; delete definition in §303.23; and renumber remaining sections in Subpart A.

Sect. No.	Current Title	Changes [1]
	SUBPART B--STATE APPLICATION FOR A GRANT	
303.100	Conditions of assistance.	(1) Revise pgh (a) for clarity; move pgh "(c)" to "(a)(1)," and change pgh "(d)" to "(c);" add headings to pghs (a)-(c); and make other technical changes. (2) Further revise pgh (a) to clarify that each application must contain -- (A) The required information in subpart B; and "(B) Copies of all applicable State statutes, regulations, and other State documents that show the basis of that information."
303.123	Prohibition against commingling.	♦ Incorporate the substance of the note into the text following §303.123, and delete the note.
303.124	Prohibition against supplanting.	♦ Add a new pgh (c) to clarify that, for purposes of pgh (b), a State, in any FY, must spend at least the same amount for EI services that it spent the previous year.
303.128	Traditionally underserved groups.	♦ Add "inner-city" to the list of groups in paragraph (a).
303.148	Transition to preschool programs.	(1) Change title to "Transition to preschool or other appropriate services." (2) Re-structure section for clarity and completeness, including adding headings to each pgh. (3) Add a new pgh (c) (Transmittal of records; parental consent), by including the provisions from §303.344(h) (now "(i)"). (But clarify that consent is not required for directory information to LEA for Part B child find.)
303.161	State definition of developmental delay.	♦ Clarify that each application must contain the State's definition of developmental delay "as required in 303.300(b)."
303.167	Individualized family service plans. (Re—policies & procedures)	(1) Amend pgh (b) to include "§§303.340-303.343" in the list of applicable sections (i.e., to add new §303.341). (2) Amend pgh (c) (on natural environments) by -- (1) moving the substance to a new §303.341(a); and (2) revising the language to state that each application must include "Policies and procedures on natural environments that meet the requirements of §§303.341 and 303.344(d)(3)."

Sect. No.	Current Title	Changes [1]
SUBPART D—COMPONENTS OF A STATEWIDE SYSTEM		
303.300	State eligibility criteria and procedures.	(1) Change title to "Child eligibility--criteria and procedures;" and add pgh headings (General; State definition of developmental delay; Diagnosed condition; and Children who are at risk). (2) Revise pgh (a), to clarify that the eligibility criteria must -- (A) meet the requirements in §303.300(b)-(d); and (B) be on file in the State, and available for public review.
303.301	Central directory.	♦ Amend pgh (a)(3) to add the substance of the note following §303.301 to clarify that "Professional and other groups " include "parent support groups & advocate associations;" and delete the note.
303.302	Service coordination. (New Section)	(1) Add the substance of §303.23 to new §303.302; and revise new pgh (a) to state that "Each system must ensure that service coordination is available..." (2) Make technical changes (e.g., delete "(case management)" from the title, and add headings to each pgh). (3) Incorporate the substance of notes 1 and 2 into the text of the regulations, as a new pgh (a)(2); and delete the notes. (4) Add a new pgh (b)(2) to clarify that service coordination is an on-going process designed to enhance service delivery, and, thus, is not required to be included as an EI service in a child's IFSP. (5) Add a new function of service coordinators, as pgh (d) (8), (i.e., At the discretion of the State, assisting families to understand sources of financing EI services, including public and private insurance programs, and how to access those sources...).
303.320	Public awareness program.	♦ Revise section by making technical changes, to more closely track the statute, and for clarity and improved readability.
303.321	Comprehensive child find system.	(1) In pgh (a), change the Part B child find citation from §300.128 to §300.125. (2) Revise pgh (b)(1) to clarify that the child find system includes children with disabilities from -- "(i) Traditionally underserved groups, including minority, low-income, inner-city, and rural families; and (ii) Highly mobile groups (such as migrant and homeless children)." (3) Revise the referral procedures in pgh (d)(2), as follows: ♦ Replace the 2-day timeline requirement In pgh (d)(2)(ii) with "as soon as reasonably possible." ♦ In pgh (d)(2)(iii), include a reference to lead agency responsibilities in §303.320(a)(2)(ii)(B)). (4) Revise the list of referral sources in pgh (d)(3), to: ♦ Add the qualification "if appropriate;" ♦ Add "and child care" between "Day care" and "programs;" and ♦ Add "Other Federally funded programs such as Head start, Early Head Start, and Even Start."

Sect. No.	Current Title	Changes [1]
303.322	Evaluation and assessment	(1) Revise pgh (a)(1)(ii) to clarify that "A family directed identification of the needs of each child's family..." must meet the requirements of pgh (d) (Family assessment). (2) In pgh (b)(2)(ii), replace "their infant or toddler with a disability" with "the child."
	Individualized Family Service Plans	
303.340	General.	(1) Change title to "Definition of IFSP; lead agency responsibility." (2) Add a new pgh (a) (Definition of IFSP); incorporate the substance of the current definition (from §303.340(b)); and revise the definition to specify (in pghs (a)(1) and (a)(3)) the role of the IFSP team in developing a child's IFSP. (3) Redesignate existing pgh (c) (Lead agency responsibility) as new pgh (b); (4) Redesignate existing pgh (a) (policies and procedures on IFSPs) as new pgh (b)(1); and replace "includes" with "has in effect."
303.341	Policies and procedures on natural environments. (New section)	(1) Add a new §303.341 (Policies and procedures on natural environments), as described in pghs (2)-(5), below: (2) Add a new pgh (a), by incorporating the substance of §303.167(c), to clarify that the provision of EI services in other than a natural environment occurs only if the IFSP team , based on the evaluation and assessment required in §303.322... determines that early intervention cannot be achieved satisfactorily for the child in a natural environment. (3) Add a new §303.341(b) to clarify that -- (A) the IFSP team must determine the natural environment for each service; and (B) if the team determines that a specific service must be provided in another environment, a justification must be included in the IFSP. (4) Add a new §303.341(c), to clarify that the justification in pgh (b) must -- (A) include the basis of the IFSP team's decision; (B) be based on the identified needs of the child and the projected outcomes; and (C) if appropriate, be based on the nature of the service required to meet the unique needs of the child. (5) Add a new §303.341(d), to clarify that the provisions on natural environments do not apply to services designed to meet the needs of a child's parents or other family members.
303.342	Procedures for IFSP development, review, and evaluation.	(1) Change title to "Development, review, and revision of IFSPs;" and add headings to pghs (a) , (a)(1), and (a)(2). (2) Add new pgh (a)(2) ("Consideration of special factors"), as adapted from Part B. (3) Make technical changes to pgh (b) (Periodic review) (i.e., making the last sentence in (b)(1) as new (b)(2), and changing existing pgh (b)(2), as (b)(3)). (4) Revise the second pgh of the note following §303.342 to add "or assessment" after "evaluation" procedures.

Sect. No.	Current Title	Changes [1]
303.343	Participants in IFSP meetings and periodic reviews.	(1) Change title to "IFSP team--meetings and periodic reviews. (2) Revise pgh (a)(2) to clarify how evaluations or assessments are interpreted if the person(s) conducting them is not at the IFSP meeting , i.e., "...steps must be taken to ensure-- (i) The person's involvement through other means (e.g., through participating in a telephone conference call); or (ii) That the results of the evaluations and assessments are appropriately interpreted at the meeting, by making pertinent records available at the meeting, and having a person attend the meeting who is qualified to interpret the evaluation and assessment results and their service implications (who may be one of the participants described in [§303.343(a)(1)]. "
303.344(a)	Content of IFSP--Information about child's status.	♦ Revise pgh (a)(2) to add "required" after "statement."
303.344(b)	Content of IFSP--Family information.	♦ Add a new pgh (b)(2), to specify that the statement on family information must be based on the family assessment required under §303.322(d).
303.344(c)	Content of IFSP—Outcomes.	(1) Add that outcomes must be "based on the evaluations and assessments required in 303.322(c) and (d)." (2) Change "timeliness" to "timelines."
303.344(d)	Content of IFSP—EI services.	(1) Restructure pgh (d), and add headings (i.e., "Statement of services;" "Frequency, intensity, and method;" "Natural environments—location of services;" and "Payment arrangements"). (2) Amend pgh (d) (1) to specify that the statement of EI services must include the information required in §303.344(d)(2) through (d)(4). (3) Redesignate pgh (d)(1)(i) as proposed pgh (d)(2), and revise, to clarify that the IFSP must specify the frequency, intensity, and method of delivering <u>each</u> EI service. (4) Replace pgh (d)(1)(ii) and (iii) with proposed pgh (d)(3), and revise to state -- "In accordance with §303.341, the IFSP must-- (i) Specify the natural environments (locations or settings) where each EI service will be provided; and (ii) Include a justification of the extent, if any, to which each service will <u>not</u> be provided in a natural environment." (5) Redesignate pgh (d)(1)(iv) as (d)(4) (Payment arrangements); and add an introductory clause (i.e., "The IFSP must include a statement of the payment arrangements, if any, for <u>each</u> early intervention service.")

Sect. No.	Current Title	Changes [1]
303.344(e) (New)	Content of IFSP (Evaluations and assessments).	(1) Add a new §303.344(e), to specify that evaluations and assessments must be completed prior to, and in preparation for, conducting the IFSP meeting, and therefore, may not be listed as an early intervention service in the IFSP. (2) Renumber existing pghs "e, f, g, and h" as "f, g, h, and i."
303.344(h)	Content of IFSP—Transition from Part C services.	(1) Redesignate "§303.344(h)" as "§303.344(i)." (2) Move the substance of current pgh (h)(2)(iii) (Transmission of information about the child) to §303.148 (discussed earlier), and include a reference to §303.148(c) . (3) Add a new pgh (i)(2)(iii)(B) to include a reference to The conference on transition services required in §303.148(d). (4) Add a new pgh (i)(2)(iv) to clarify that the transition steps must include other activities that the IFSP team determines are necessary to support the transition of the child.
	Personnel Training and Standards	
303.360	Comprehensive system of personnel development (CSPD).	◆ Restructure and add pgh headings for clarity and to improve the readability of the section
303.361	Personnel standards.	(1) Add pgh headings, for readability and to conform to Part B. (2) Add the substance of the note following 303.361, as new pghs (b)(2) and (b)(3) , and delete the note. (3) Add, from the Part B Regs, the substance of 34 CFR 300.136(b)(4) and (g)(2) to the corresponding pghs in §303.361, and otherwise conform this section to Part B personnel standards requirements.
	SUBPART E—PROCEDURAL SAFEGUARDS	
303.401	Definitions of consent, native language, and personnally identifiable information.	◆ Add a new pgh (a)(3)(ii) Re—If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before it was revoked). This change conforms to Part B.
303.420	Due process procedures.	(1) Replace terms such as "individual child complaints" or "complaints" with "requests for due process hearings" or "due process hearings" throughout this section, and in §§303.402, and 303.421-303.425. (2) Add a new pgh (b) to provide that, if a parent initiates a hearing under §303.420(a)(1) or (a)(2), the lead agency must inform the parent of the availability of mediation described in §303.419. (3) Delete Note 1 following §303.420.
303.421	Appointment of an impartial person.	(1) Change title to "Impartial hearing officer;" and add new introductory language, Re -- "Each lead agency shall ensure that any due process hearings... are conducted by an impartial hearing officer who..." (2) In pgh (a)(2), replace "complaint" with "dispute that is the subject of the hearing," and make structural changes.

Sect. No.	Current Title	Changes [1]
303.421	Appointment of an impartial person. (Continued)	(3) In pgh (b)(1), replace "the person appointed to implement the complaint resolution process" with "a person who serves as a hearing officer in accordance with this section."
303.422	Parent rights in administrative proceedings.	♦ Change title to "Parent rights in due process hearings;" and replace "administrative proceeding(s)" with " due process hearing" in the text.
303.423	Convenience of proceedings; timelines	(1) Amend title to replace "proceedings" with "hearings" (2) Add an introductory phrase ("Each lead agency must ensure that--"), and make other technical changes. (3) In pgh (a), replace the introductory clause with "Any due process hearing conducted under this part ..." (4) In Pgh (b), replace "complaint" or "complaint resolution process" with "due process hearing," etc; & make other technical changes.
303.424	Civil action.	♦ After "Any party aggrieved by the findings and decision," replace "regarding an administrative complaint" with "made under §303.420..."
303.425	Status of child during proceedings.	(1) In pgh (a), add "administrative or judicial" before "proceeding;" and replace "administrative complaint under this part" with "a request for a due process hearing under §303.420." (2) In pgh (b), replace "complaint" with "proceeding." (3) Add a new pgh (c) Re-- "This section does not apply if a child is transitioning from EI services under this part to preschool services under Part B of the Act."
SUBPART F—STATE ADMINISTRATION		
303.501	Supervision and monitoring of programs.	♦ Change title of pgh (b) from "Methods of administering programs" to "Methods of ensuring compliance;" and make a similar change in the text.
Policies & Procedures Related to Financial Matters		
303.519 (New)	Policies related to payment for services.	(1) Add a new §303.519, by incorporating parts of existing §303.520, as follows: ♦ Move existing §303.520(a) (Re-State policies on how EI services will be paid for) to new §303.519(a); and add new paragraphs regarding policy requirements (i.e., (a)(1)(i) for States with a system of payments, and (a)(1)(ii) for those without a system of payments). ♦ Move current §303.520(c) (procedures to ensure timely provision of services) to new §303.519(b); but delete reference to a State's 5th year of participation. ♦ Move current §303.520(d) (Proceeds from public and private insurance) to new §303.519(c); move (c)(2) to (c)(3) and revise to clarify that a State's use of private insurance (as with public insurance) is not considered State or local funds under the nonsupplanting requirements in §303.124. ♦ Add new 303.520(c)(2) regarding use of fee income.

Sect. No.	Current Title	Changes [1]
303.519 (New) (Continued)	Policies related to payment for services. (continued)	(2) Add new §303.519(d), governing the use of Part B funds for EI services to eligible children under Part C. (3) Add new §303.519(e) (Construction), from Part B Regulations.
303.520	Policies related to payment for services.	(1) Change title to "System of payments." (2) Add new §303.520(a)(1) to define "System of payments." (3) Add new §303.520(a)(2) Re – the lead agency is responsible for ensuring compliance with the system of payments. (4) Add new §303.520(b) to provide that a system of payments may have one or both types of fees (i.e., a system established under State law for EI services (e.g., sliding fee scales based on family income); or cost participation (e.g., co-pay or deductible amounts)). (5) Add new §303.520(c) to require (through §§303.520(d)(1) and 303.173) a State to submit an assurance that no fees will be charged in 3 circumstances (services at no cost, inability to pay, and FAPE and the use of Part B funds). (6) Add proposed §303.520(d), to specify requirements for State policies in States with a system of payments. (7) Add proposed §303.520(e), to specify procedural safeguards regarding payments by families.
303.521	Fees.	(1) Change the title to "Use of insurance." (2) Delete the entire text of current §303.521, and add new provisions under the following paragraphs: ◆ (a)--Public insurance--no mandatory enrollment. ◆ (b)--Use of public insurance. ◆ (c)--Use of private insurance--States with a fee scale for early intervention services. ◆ (d)--Use of private insurance—States with no system of payments ◆ (e)--Use of Part C funds.
Other Changes to Subpart F		
303.523	Interagency agreements.	(1) Add the substance of the note following 303.523 to the text (Re—examples of how a State may ensure timely resolution of intra and interagency disputes); and delete the note. (2) Amend §303.523(a), to clarify that the lead agency must enter into agreements with other State-level agencies involved in the State's EI Program -- "whether by services or funding..." (3) Amend §303.523(d) (Additional components), to specify three topics (transition, policies on payment for services, and, at the discretion of the State, child find) to be included in interagency agreements.
SUBPART G—STATE INTERAGENCY COORDINATING COUNCIL		
303.600	Establishment of Council.	◆ Restructure pgh (c) for clarity.
303.653	Transitional services.	◆ Revise title to replace "transitional" with "transition;" replace " toddlers with disabilities" with "eligible children under this part;" and add "preschool" before "services under Part B..."

[Note: Attachment 2 will not be codified in the Code of Federal Regulations]

Section Number	Section Title	Number of Notes
--	Before §303.6--List of terms defined in specific subparts and sections.	1
303.12	Early intervention services--List of services is not exhaustive..	1
303.13	Health services--Required health services vs medical-health services.	1
303.16	Infants & toddlers with disabilities	2
"	Note 1--Diagnosed conditions (Examples).	--
"	Note 2--Information on "at risk" population.	--
303.22	Qualified---Provisions to ensure that personnel are qualified.	1
303.23	Service coordination (Redesignated as p303.302)	2
"	Note 1--Using or adapting existing service coordination systems.	--
"	Note 2--Service coordination is not intended to affect Medicaid.	--
303.123	Prohibition against committing--Meaning of "Commingle."	1
303.148	Transition to preschool programs--Considerations.	1
303.300	State eligibility criteria & procedures--Re "informed clinical opinion."	1
303.301	Central directory--Examples of "appropriate groups."	1
303.320	Public awareness program.	2
"	Note 1--Components of an effective public awareness program.	--
"	Note 2--Examples of methods for informing the general public.	--
303.321	Comprehensive child find system—Consider "tracking systems," etc..	1
303.340	IFSP (General)--Children who must have an IFSP & other "programs."	1
303.342	Procedures for IFSP development, review, and evaluation.	1
"	Periodic reviews vs annual evaluations ; need for frequent evaluations.	--
303.344	Content of an IFSP.	4
"	Note 1--Addresses appropriate location of services.	--
"	Note 2--Addresses variety of roles that family members play.	--
"	Note 3--Differentiates between early intervention & other services.	--
"	Note 4--States that the IFSP does not have to be a detailed document.	--
303.345	Provision of services before evaluation and assessment...	1
"	Describes purpose of §303.345.	--
303.361	Personnel standards.	1

303.404	Parent consent.	2
"	Note 1--Other consent requirements affecting Part C.	--
"	Note 2--Part B Regulations that challenge parent non-consent applies to Pt C.	--
303.420	Due process procedures.	2
	Note 1--Due process hearings vs. State complaints	--
	Note 2—Need for speedy resolution, Re—rapid changes in children.	--
303.423	Convenience of proceedings; timelines—Need for timely resolution.	1
303.460	Confidentiality of information—Part B confidentiality Regulations apply to C.	1
303.526	Policy for contracting or otherwise arranging for services.	1
--	States may continue using past agencies, etc. if they meet Part C.	--
303.527	Payor of last resort--Congressional intent Re not withdrawing funding.	1
303.600	Establishment of Council--Parent Reps—not to be agency employees.	1

[Note: Attachment 3 will not be codified in the Code of Federal Regulations]

ATTACHMENT 3--PART B REGULATIONS ON THE COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD) (34 CFR Part 300)

The following is for use by commenters who do not have access to the Part B CSPD requirements from the Part B regulations, to assist them in responding to the questions under §303.360 of the preamble to this NPRM. Those questions concern whether the Part C CSPD provisions should be amended to address the Part B requirements related to (1) ensuring an adequate supply of qualified personnel (see §300.381), and (2) the improvement strategies in §300.382.

§300.380 General CSPD requirements.

(a) Each State shall develop and implement a comprehensive system of personnel development that --

(1) Is consistent with the purposes of this part and with section 635(a)(8) of the Act;

(2) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel;

(3) Meets the requirements of §§300.381 and 300.382; and

(4) Is updated at least every five years.

(b) A State that has a State improvement grant has met the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(14))

§300.381 Adequate supply of qualified personnel.

Each State must include, at least, an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum --

(a) The number of personnel providing special education and related services; and

(b) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (a) of this section with temporary certification), and on the extent of certification or retraining necessary to eliminate these shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs.

(Authority: 20 U.S.C. 1453(b)(2)(B))

§300.382 Improvement strategies.

Each State must describe the strategies the State will use to address the needs identified under §300.381. These strategies must include how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and parapro fessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities. The plan must include a description of how the State will--

(a) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities including how the State will work with other States on common certification criteria;

(b) Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

(c) Work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

(d) Work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of a program of preparation;

(e) Work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in credentialing of teachers and other personnel;

(f) Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(g) Acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State will, if appropriate, adopt promising practices, materials, and technology;

(h) Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are under-represented in the fields of regular education, special education, and related services;

(i) Insure that the plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

(j) Provide for the joint training of parents and special education, related services, and general education personnel.

(Authority: 20 U.S.C. 1453 (c)(3)(D))

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Federal Register

Tuesday,
September 5, 2000

Part III

Department of the Treasury

Community Development Financial Institutions Fund

Funds of Availability (NOFA) Inviting Applications for the Bank Enterprise Award Program; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) authorizes the Community Development Financial Institutions Fund (hereafter referred to as "the Fund") to provide incentives to insured depository institutions for the purposes of promoting investments in or other support to Community Development Financial Institutions ("CDFIs") and facilitating increased lending and provision of financial and other services in economically distressed communities. Insured depository institutions and CDFIs are defined terms in 12 CFR part 1806, the regulations that govern the Bank Enterprise Award ("BEA") Program (the "BEA Program Regulations"). As of the date of this NOFA, the Fund intends to make available up to $30 million in BEA Program funds, subject to the availability of appropriated funds. The Fund may award in excess of $30 million if it deems it appropriate, subject to the availability of appropriated funds. Under this NOFA, the Fund anticipates a maximum award amount of $2.5 million per applicant. However, the Fund reserves the right to award amounts in excess of the anticipated maximum award amount, if the Fund deems it appropriate.

DATES: Applications may be submitted at any time on or after September 5, 2000. The deadline for receipt of an application is 6 p.m. Eastern Standard Time on Tuesday, November 21, 2000. Applications received in the offices of the Fund after that date and time will not be accepted and will be returned to the sender. Any entity seeking certification as a CDFI (as described in 12 CFR 1805.200) for the purpose of the BEA Program is strongly encouraged to submit the Application Form for Certification (the contents of which are described in 12 CFR 1805.201(b)(1) through (7)), by Tuesday, November 21, 2000. If an entity fails to submit such application by this deadline, the Fund may not have sufficient time to timely complete a certification review for the purpose of the current funding round of the BEA Program. In addition, with respect to all requests for certification, the Fund reserves the right to request clarifying or technical information after reviewing materials submitted as described in 12 CFR 1805.201(b)(1) through (7). If the entity seeking certification does not respond to such requests in a timely manner, the Fund may not have sufficient time to timely complete a certification review for the purposes of the current funding round of the BEA Program.

ADDRESSES: Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Applications sent by fax or electronic transfer will not be accepted.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the CDFI Program Manager. Should you wish to request an application package or have questions regarding application procedures, contact the Awards Manager. The CDFI Program Manager and the Awards Manager may be reached by e-mail at cdfihelp@cdfi.treas.gov, by telephone at (202) 622–8662, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. Allow at least one to two weeks from the date the Fund receives a request for receipt of the application package. Applications and other information regarding the Fund and its programs may be downloaded from the Fund's website at *http://www.treas.gov/cdfi.*

SUPPLEMENTARY INFORMATION:

I. Background

As part of a national strategy to facilitate revitalization and increase the availability of credit, investment capital and financial services in distressed communities, the Community Development Banking and Financial Institutions Act of 1994 ("Act") authorizes a portion of funds appropriated to the Fund to be made available for distribution through the BEA Program. The BEA Program is largely based on the Bank Enterprise Act of 1991, although Congress significantly amended the program to facilitate greater coordination with other activities of the Fund. The BEA Program and the Community Development Financial Institutions Program (12 CFR part 1805) are intended to be complementary initiatives that support a wide range of community development activities and facilitate partnerships between traditional lenders and CDFIs. This NOFA invites applications from insured depository institutions for the purpose of promoting community development activities and revitalization.

II. Information Sessions

In connection with this NOFA, the Fund is conducting Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the BEA Program. Pre-registration is required, as the Information Sessions will be held in secured federal facilities. The Fund will conduct 12 in-person Information Sessions, beginning September 20, 2000, as follows: Los Angeles, CA, September 20, 2000; San Francisco, CA, September 22, 2000; Chicago, IL, September 25, 2000; Miami, FL, September 26, 2000; Salt Lake City, UT, September 29, 2000; Kansas City, MO, October 2, 2000; Memphis, TN, October 3, 2000; Charlotte, NC, October 4, 2000; Minneapolis, MN, October 4, 2000; Boston, MA, October 5, 2000; San Antonio, TX, October 5, 2000; and New York, NY, October 6, 2000.

In addition to the in-person sessions listed above, the Fund will broadcast an Information Session using interactive video-teleconferencing technology on October 12, 2000, from 1 p.m. to 4 p.m. EST. Pre-registration is required, as these sessions will be held in secured federal facilities. This Information Session will be produced in Washington, DC, and will be downlinked via satellite to the local Department of Housing and Urban Development (HUD) offices located in the following 81 cities: Albany, NY: Albuquerque, NM; Anchorage, AK; Atlanta, GA; Baltimore, MD; Bangor, ME; Birmingham, AL; Boise, ID; Boston, MA; Buffalo, NY; Burlington, VT; Camden, NJ; Casper, WY; Charleston, WV; Chicago, IL; Cincinnati, OH; Cleveland, OH; Columbia, SC; Columbus, OH; Dallas, TX; Denver, CO; Des Moines, IA; Detroit, MI; Fargo, ND; Flint, MI; Fort Worth, TX; Fresno, CA; Grand Rapids, MI; Greensboro, NC; Hartford, CT; Helena, MT; Honolulu, HI; Houston, TX; Indianapolis, IN; Jackson, MS; Jacksonville, FL; Kansas City, KS; Knoxville, TN; Las Vegas, NV; Little Rock, AR; Los Angeles, CA; Louisville, KY; Lubbock, TX; Manchester, NH; Memphis, TN; Miami, FL; Milwaukee, WI; Minneapolis, MN; Nashville, TN; New Orleans, LA; New York, NY; Newark, NJ; Oklahoma City, OK; Omaha, NE; Orlando, FL; Philadelphia,

PA; Phoenix, AZ; Pittsburgh, PA; Portland, OR; Providence, RI; Reno, NV; Richmond, VA; Sacramento, CA; St. Louis, MO; Salt Lake City, UT; San Antonio, TX; San Diego, CA; San Francisco, CA; San Juan, PR; Santa Ana, CA; Seattle, WA; Shreveport, LA; Sioux Falls, SD; Spokane, WA; Springfield, IL; Syracuse, NY; Tampa, FL; Tucson, AZ; Tulsa, OK; Washington, DC; and Wilmington, DE.

To register online for an Information Session, please visit the Fund's website at *http://ww.treas.gov/cdfi*. If you do not have Internet access, you may register by calling the Fund at (202) 622–8662.

III. Eligibility

The Act specifies that eligible Applicants must be insured depository institutions as defined in 12 U.S.C. 1813(c)(2).

IV. Designation of Distressed Community

In accordance with 12 CFR 1806.200(d), in the case of Applicants carrying out Qualified Activities requiring the designation of a Distressed Community (as defined in 12 CFR 1806.103(r)), the Fund will provide Applicants with data and other information to help identify areas that are eligible to be designated as Distressed Communities. Specifically, the Fund will provide such information through the CDFI Fund Help Desk website (the "Help Desk"). The Help Desk is found at *http://www.treas.gov/cdfi*. The Fund requires all Applicants to use the Help Desk to produce the Distressed Community worksheets and corresponding maps. The Help Desk provides easy step-by-step instructions on how to designate a Distressed Community and allows an Applicant to create and print instantly a Distressed Community designation worksheet(s) and corresponding map(s).

V. Designation Factors

The BEA Program Regulations describe the Fund's processes for rating and selecting Applicants to receive assistance and for determining award amounts. The BEA Program rating and selection process gives priority to Applicants in the following order: (1) Equity Investments in CDFIs serving Distressed Communities; (2) Equity Investments in CDFIs not serving Distressed Communities; (3) CDFI Support Activities; and (4) Development and Service Activities (as defined in 12 CFR 1806.103). Assistance amounts will be calculated based on increases in Qualified Activities that occur during a 6-month Assessment Period in excess of activities that occurred during a 6-month Baseline Period. In general, estimated award amounts for Applicants making Equity Investments in CDFIs will be equal to 15 percent of the projected increase in such activities. An Applicant may choose to accept less than the maximum amount of assistance in order to increase the ranking of its application. Estimated award amounts for CDFI Applicants for carrying out CDFI Support Activities will be equal to 33 percent of the projected increase in such activities. Estimated award amounts for non-CDFI Applicants for carrying out CDFI Support Activities will be equal to 11 percent of the projected increase in such activities.

For Applicants pursuing Development and Service Activities, a multiple step procedure is outlined in the BEA Program Regulations that will be used to calculate the estimated award amounts. In general, if an Applicant is a CDFI, such estimated award amount will be equal to 15 percent of the total score calculated in the multiple step procedure. If an Applicant is not a CDFI, such estimated award amount will be equal to 5 percent of the total score calculated in the multiple step procedure. When ranking and funding Applicants in each category, the Fund will apply criteria contained in the BEA Program Regulations. The Fund, in its sole discretion: (1) May adjust the estimated award amount that an Applicant may receive prior to the end of the Assessment Period; (2) may establish a maximum amount that may be awarded to an Applicant; and (3) reserves the right to limit the amount of an award to any Applicant if the Fund deems it appropriate.

VI. Baseline Period and Assessment Period Dates

As part of its application, an Applicant shall report the Qualified Activities that it actually carried out during the 6-month Baseline Period beginning January 1, 2000 and ending June 30, 2000. An Applicant shall also project the Qualified Activities that it expects to carry out during the 6-month Assessment Period beginning January 1, 2001 and ending June 30, 2001. Applicants participating in the BEA Program during the Assessment Period will be required to submit to the Fund a Final Report (Part II of the Application) of Qualified Activities actually carried out during the Assessment Period. The deadline for receipt of the Final Report is 6 p.m. Eastern Daylight Time on Thursday, August 2, 2001. Final Reports received in the offices of the Fund after that date and time will not be accepted and will be returned to the sender. The Fund will evaluate the performance of Applicants in carrying out projected activities to determine actual award amounts. The Fund may request clarifying or technical information after receiving an Applicant's Final Report.

VII. Targeted Financial Services

The lack of availability of Financial Services (as defined at 12 CFR 1806.103(u)) tailored to the needs of Low- and Moderate-Income people is a significant challenge in many urban, rural and Native American communities. For the purpose of this NOFA, the Fund provides the following guidance to Applicants regarding three specific types of targeted Financial Services: (1) Electronic Transfer Accounts ("ETAs"); (2) Individual Development Accounts ("IDAs"); and (3) First Accounts, which are bank accounts designed to bring Low- and Moderate-Income people, whether they never have had an account or previously had an account, into the financial services system ("First Accounts").

A. Electronic Transfer Accounts

On September 25, 1998, the U.S. Department of the Treasury ("Treasury") published a final rule in the **Federal Register**, 31 CFR Part 208 ("EFT Rule"), implementing the mandatory electronic funds transfer ("EFT") requirements of the Debt Collection Improvement Act of 1996. The EFT Rule provides that any individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an electronic transfer account ("ETA") at any Federally insured financial institution offering ETAs. Treasury subsequently published the ETA Notice ("ETA Notice") in the **Federal Register** on July 16, 1999 (64 FR 38510), setting forth the characteristics of ETAs.

For the purpose of this NOFA, the term ETA and all terms related to Treasury's EFT initiative that are not defined in the BEA Program Regulations shall have the same meanings as defined in the EFT Rule and the ETA Notice. Only federally insured depository institutions that have entered into, and are in compliance with, the Financial Agency Agreement published as an appendix to the ETA Notice may receive an award under the BEA Program for providing ETAs. An Applicant's ETA product must meet all of the requirements set forth in the ETA Notice, and any subsequent guidance issued by Treasury, and be in compliance with the terms and conditions of its Financial Agency Agreement with Treasury. Furthermore, while an Applicant is not limited to

offering ETAs only to Low- and Moderate-Income people, only those ETA products that are provided to Low- and Moderate-Income individuals at locations in Distressed Communities, as required by 12 CFR 1806.103(u), are eligible for purposes of receiving a BEA Program award.

As provided at 12 CFR 1806.202(c)(3), all Financial Service activities must be valued "based on the administrative costs of providing such services." For the purpose of this NOFA, the Fund will value the administrative cost of providing an ETA at $50.00 per account. Thus, an Applicant seeking a BEA Program award for ETA activities does not need to submit documentation of administrative expenses incurred in delivering its product. Instead, the Applicant must indicate the number of ETAs opened by Low- and Moderate-Income individuals at locations in the Distressed Community, which shall be multiplied by $50.00 to yield the respective Baseline Period and Assessment Period levels of ETA activity. The resulting number shall be reported as the value of total eligible ETA activities for the purpose of calculating award amounts.

For the purpose of this NOFA, and in keeping with 12 CFR 1806.201(b)(3)–(4) of the BEA Program Regulations, the Fund will assign a priority factor of 2.0 for ETAs opened by Low- and Moderate Income individuals at locations in Distressed Communities.

An Applicant may calculate the number of ETAs opened by Low- and Moderate-Income individuals by either: (1) Collecting income data on its ETA customers; (2) certifying that the Applicant reasonably believes that ETA holders are Low- and Moderate-Income individuals and providing a brief analytical narrative with information describing how the Applicant made this determination; or (3) using the Fund's methodology described below.

The Fund has developed a methodology for estimating the number of Low- and Moderate-Income ETA holders in lieu of requiring Applicants to collect data on the actual income levels of account holders. For both the Baseline Period and the Assessment Period, the value of ETAs shall be derived based on the total number of new accounts multiplied by the per unit value of $50.00. This number shall be multiplied by the total percentage of Low- and Moderate-Income individuals who are residents of the census tract where the ETA was opened (*e.g.*, bank branch). Such census tract must be part of a Distressed Community. The Help Desk includes a new component that will provide the needed census data and make the calculations for Applicants.

The Fund is aware that Treasury's Financial Management Service will provide insured depository institutions that offer ETAs compensation equal to $12.60 per ETA to offset the set-up costs of opening an ETA. The ETA award amount provided through this NOFA is intended to assist insured depository institutions to cover other costs associated with offering ETAs.

If an Applicant seeks a BEA Program award for providing financial literacy classes, related training or one-on-one technical assistance to ETA holders, the Applicant must submit documentation of the costs of providing such services and report such activities as Community Service activities, as described in 12 CFR 1806.103(p).

Applicants may wish to know that the Federal Financial Institutions Examination Council (FFIEC) has issued interpretive guidance under the Community Reinvestment Act on ETAs and other financial services, which may be obtained from the FFIEC website.

B. Individual Development Accounts

On December 14, 1999, the Office of Community Services of the Administration for Children and Families ("OCS") of the U.S. Department of Health and Human Services published Program Announcement OCS–2000–04 ("IDA Program Announcement") in the **Federal Register** (64 FR 69824) to implement the second year of the Assets for Independence Demonstration Program ("IDA Program") authorized pursuant to the Assets for Independence Act, 42 U.S.C. 604. The IDA Program Announcement stated that OCS expected up to $5.4 million in FY 2000 funds to be available for funding commitments to approximately 25 projects, not to exceed $500,000 per project and averaging $200,000 for the five-year project and budget periods. The IDA Program is intended, among other things, to determine the extent to which Individual Development Accounts ("IDAs") may be used to enable individuals and families with limited means to increase their economic self-sufficiency through the promotion of savings for postsecondary education, homeownership and microenterprise development. This NOFA provides guidance to BEA Program Applicants on how IDAs may be used, under the BEA Program, to serve Low- and Moderate-Income individuals at locations in Distressed Communities.

In brief, IDAs are savings accounts for income-eligible individuals that are specifically restricted for use in activities associated with purchasing a home, obtaining post-secondary education, or capitalizing a business. IDA programs: (1) Are generally targeted to lower income individuals; (2) create savings incentives through the provision of matching funds from third parties; (3) may combine matching fund incentives with financial literacy education and other training or technical assistance and support services; and (4) may be provided by non-profit organizations collaborating with financial institutions (which includes insured depository institutions) that may be acting as Trustees, Custodians or in some other capacity.

Interested parties are instructed to refer to the IDA Program Announcement for further IDA Program information. Such information may be found at *http://www.acf.dhhs.gov/programs/ocs/* under "Funding Opportunities" or through a link at the Fund's main website at http://www.treas.gov/cdfi. While an Applicant is not required to be a participant in the IDA Program to receive a BEA Program award for its IDA activities, IDAs established under an IDA Program grant must meet the requirements set forth in the IDA Program Announcement (including part II, sections G(4) and (5)).

For the purpose of this NOFA, the term IDA and all terms related to the IDA Program not defined in the BEA Program Regulations shall have the same meanings as defined in the IDA Program Announcement.

For the purpose of this NOFA, the Fund will presume that IDAs established for Project Participants by financial institutions, as discussed in the IDA Program Announcement (including part II, section G(3)), benefit Low- and Moderate-Income individuals based on the requirements for Eligible Individuals described under part II, G(3)(a) of the IDA Program Announcement, which states that "Eligibility for participation in the demonstration projects is limited to individuals who are members of households eligible for assistance under TANF [Temporary Assistance for Needy Families] or of households whose adjusted gross income does not exceed the earned income amount described in section 32 of the Internal Revenue Code of 1986, which establishes the eligibility for the Earned Income Tax Credit (EITC) (taking into account the size of the household), and whose net worth as of the end of the calendar year preceding the determination of eligibility does not exceed $10,000, excluding the primary dwelling unit and one motor vehicle owned by a member of the household."

As provided at 12 CFR 1806.202(c)(3), all Financial Service activities must be valued "based on the administrative costs of providing such services." For the purpose of this NOFA, the Fund will value the administrative cost of providing an IDA at $100.00 per account. Thus, an Applicant seeking a BEA Program award for IDA activities does not need to submit documentation of administrative expenses incurred in delivering its product. Instead, the Applicant must indicate the number of IDAs opened by Low- and Moderate-Income individuals at a location in a Distressed Community, which shall be multiplied by $100.00 to yield the respective Baseline Period and Assessment Period levels of IDA activities.

For the purpose of this NOFA, and in keeping with 12 CFR 1806.201(b)(3)–(4) of the BEA Program Regulations, the Fund will assign a priority factor of 2.0 for IDAs opened by Low- and Moderate-Income individuals at locations in Distressed Communities.

For institutions not providing IDAs in collaboration with a Project Grantee under the IDA Program, an Applicant may calculate the number of IDAs opened by Low- and Moderate-Income individuals by either: (1) Collecting income data on its IDA customers; (2) certifying that the Applicant reasonably believes that IDA holders are Low- and Moderate-Income individuals and providing a brief analytical narrative with information describing how the Applicant made this determination; or (3) using the Fund's methodology described below.

The Fund has developed a methodology for estimating the number of Low- and Moderate-Income IDA holders in lieu of requiring Applicants to collect data on the actual income levels of IDA holders. For both the Baseline Period and the Assessment Period, the value of IDA activities may be derived based on the total number of new IDAs opened multiplied by the per unit value of $100.00. This number shall then be multiplied by the total percentage of Low- and Moderate-Income individuals who are residents of the census tract where the IDA was opened (*e.g.*, bank branch). Such census tract must be part of a Distressed Community. The Help Desk includes a new component that will provide the needed census tract data and make the calculations for Applicants. The Help Desk can be found at *http://www.cdfifundhelp.gov* or *http://www.treas.gov/cdfi.*

If an Applicant seeks a BEA Program award for providing financial literacy classes, related training, one-on-one technical assistance, or supportive services to IDA holders, the Applicant must submit documentation of the costs of providing such services and report such activities as Community Service activities, as described in 12 CFR 1806.103(p). If an Applicant seeks a BEA Program award for providing matching fund grants directly to IDA Program Project Participants' accounts or to IDA Program Project Grantees for the purpose of providing matching fund grants to Project Participants' accounts, the Fund will consider such activity an administrative cost and it must be reported as a Community Service activity. Such an Applicant must provide documentation that such grant monies have been disbursed to Project Participants' accounts or a Project Grantee.

Applicants may wish to know that the Federal Financial Institutions Examination Council (FFIEC) has issued interpretive guidance under the Community Reinvestment Act on IDAs and other financial services, which may be obtained from the FFIEC website.

C. First Accounts

The President's FY 2001 budget request includes $30 million for Treasury to implement an initiative that aims to increase access to mainstream financial institutions and services for individuals and families who currently do not have a banking relationship with a mainstream financial institution. The need for such an initiative is illustrated by a 1998 Survey of Consumer Finances conducted by the Federal Reserve Board, which found that 22 percent of Low- and Moderate-Income families—approximately 8.4 million families—do not have any kind of bank account. Some of these families receive Federal benefits and thus are eligible to open an ETA at a participating financial institution. Approximately half, however, may not be eligible for an ETA, may lack access to an affordable transaction account at a mainstream financial institution, or may not understand the benefits of account ownership. The First Accounts initiative would permit Treasury to work with insured depository institutions, community organizations and electronic banking networks to increase ownership of low-cost bank accounts ("First Accounts") by people who currently do not hold transaction accounts at mainstream financial institutions, to place new ATMs in safe, secure locations in communities that lack access to these services, and to provide financial literacy education to lower-income families.

As a complement to that initiative, to stimulate the provision of low-cost financial services for people who currently do not hold transaction accounts at mainstream financial institutions, and to help inform Treasury which strategies are most successful for reaching this population, this NOFA will consider the provision of First Accounts and related financial literacy education as Qualified Activities.

This NOFA sets forth a minimum set of attributes of a First Account. For the purpose of this NOFA, a First Account shares certain basic features with an ETA. A First Account: (1) Is an individually owned account at a Federally-insured financial institution; (2) permits a minimum of four cash withdrawals and four balance inquiries per month, which are included in the monthly fee, through any combination of automated teller machine (ATM) transactions and/or over-the-counter transactions; (3) allows access to the insured depository institution's on-line point-of-sale network (if any); (4) requires no minimum balance except as required by Federal or state law; (5) provides a monthly statement; and (6) provides the same consumer protections that are available to other account holders at the financial institution. (Note that the "ETA" product may only be offered to Federal benefit recipients. Applicants wishing to use the same product design as the ETA for First Accounts must market the product under a name other than "ETA" or "Electronic Transfer Account.")

The principal distinctions between ETAs and First Accounts are that ETAs: (1) Can only be offered to individuals receiving Federal benefit, wage, salary or retirement payments; (2) allow set-off only for fees directly related to the account; and (3) are subject to a maximum monthly account-servicing fee of $3.00. For the purpose of this NOFA, while First Accounts do not require these features, First Accounts must have, at a minimum, the features set forth in the immediately preceding paragraph. Financial institutions may experiment with offering a variety of additional features and prices, so long as the accounts are targeted to Low- and Moderate-Income people in Distressed Communities. An Applicant wishing to receive BEA Program consideration for the provision of First Accounts shall submit documentation of its product features, including materials used to market it. The Fund will use such information to determine whether the product meets the requirements of a First Account.

In designing a First Account product, the Fund encourages Applicants to consider how offering additional features as part of First Accounts could reduce costs, increase utility to consumers, and increase demand for these low-cost account products. Additional guidance on the design of First Accounts, prepared by Treasury's Office of Community Development Policy, may be found at *http://www.treas.gov/cdfi.*

As provided in the BEA Program Regulations at 12 CFR 1806.202(c)(3), all Financial Service activities must be valued "based on the administrative costs of providing such services." In order to reduce Applicants' paperwork and administrative burden, the Fund will value the administrative cost of providing a First Account at $280.00 per account. This value is intended to compensate BEA Program awardees for the costs of First Accounts design, setting up each First Account, and marketing First Accounts to consumers currently lacking transaction accounts at mainstream financial institutions. Thus, an Applicant seeking a BEA Program award for First Account activities does not need to submit documentation of administrative expenses incurred in delivering its product. Instead, the Applicant must indicate the number of First Accounts opened by Low- and Moderate-Income individuals in a Distressed Community. This number shall be multiplied by $280.00 to yield the respective Baseline Period and Assessment Period levels of First Accounts activities. That number shall be reported as the value of eligible First Account activities for the purpose of calculating award amounts.

For the purpose of this NOFA, and in keeping with 12 CFR 1806.201(b)(3)–(4) of the BEA Program Regulations, the Fund will assign a priority factor of 2.0 for First Accounts opened by Low- and Moderate-Income individuals in Distressed Communities.

An Applicant may calculate the number of First Accounts opened by Low- and Moderate-Income individuals by either: (1) Collecting income data on its First Account customers; (2) certifying that the Applicant reasonably believes that First Account holders are Low- and Moderate-Income individuals and providing a brief analytical narrative with information describing how the Applicant made this determination; or (3) using the Fund's methodology described below.

The Fund has developed a methodology for estimating the number of Low- and Moderate-Income First Account holders in lieu of requiring Applicants to collect data on the actual income levels of First Account holders. For both the Baseline Period and the Assessment Period, the value of First Accounts shall be derived based on the total number of new First Accounts multiplied by a per unit value of $280.00. This number shall be multiplied by the total percentage of Low- and Moderate-Income individuals who are residents of the census tract where the First Account was opened (*e.g.*, bank branch). Such census tract must be part of a Distressed Community. The Help Desk includes a new component that will provide the needed census data and make the calculations for Applicants. The Help Desk can be found at *http://www.cdfifundhelp.gov* or *http://www.treas.gov/cdfi.*

Applicants seeking a BEA Program award for providing financial literacy classes or one-on-one technical assistance to First Accounts holders must submit documentation of the costs of providing such services and report such activities as Community Service Activities.

VIII. Reporting Financial Service Activities

Under the BEA Program Regulations at 12 CFR 1806.202(c)(3), Applicants are required to report Financial Service Activities based on the "administrative costs" of delivering such services. Further, at 12 CFR 1806.103(u), eligible Financial Service activities are limited to those services provided to "Low- and Moderate-Income persons in the Distressed Community or enterprises integrally involved with the Distressed Community." Many Applicants have found it difficult to disaggregate the administrative costs of providing specific products and services from other administrative costs, as well as determine whether the Financial Services were provided to Low- and Moderate-Income individuals in a Distressed Community.

In an effort to simplify the reporting requirements and reduce paperwork burden, the Fund is providing a new method for reporting such Financial Service activities. Similar to the methodology described above under Targeted Financial Services, the Fund will value the administrative cost of providing certain Financial Services at specified per unit values. The per unit values of specific types of Financial Services are as follows: (a) $25.00 per account for non-ETA, non-IDA and non-First Account savings accounts (translating into an award of $2.50 and $7.50 per account increase for non-CDFIs and CDFIs, respectively); (b) $40.00 per account for checking accounts (translating into an award of $4.00 and $12.00 per account increase for non-CDFIs and CDFIs, respectively); (c) $5.00 per check cashing transaction times the total number of check cashing transactions (translating into an award of $.50 and $1.50 per transaction increase for non-CDFIs and CDFIs, respectively); (d) $25,000 per new ATM installed at a location in a Distressed Community (translating into an award of $2,500 and $7,500 per new ATM installed for non-CDFIs and CDFIs, respectively); (e) $2,500 per ATM operated at a location in a Distressed Community (translating into an award of $250 and $750, for non-CDFIs and CDFIs, respectively,); (f) $250,000 per new retail bank branch office opened in a Distressed Community (translating into an award of $25,000 and $75,000 per new branch opened for non-CDFIs and CDFIs, respectively); and (g) in the case of Applicants engaging in Financial Service activities not described above, the Fund will determine the account or unit value of such services. In the case of opening a new retail bank branch office, the Applicant must certify that it has not operated a retail branch in the same census tract in which the new retail branch office is being opened in the past three years, and that such new branch will remain in operation for at least the next five years.

Type of activity	Unit of measurement	Per unit value	BEA program award amount per activity: Non CDFIs	BEA program award amount per activity: CDFIs
Savings Accounts (other than ETAs, IDAs, First Accounts).	Per account opened	$25.00	$2.50	$7.50
Checking Accounts (other than ETAs, IDAs, First Accounts).	Per account opened	40.00	4.00	12.00
Check Cashing	Per number of check cashing transactions	5.00	0.50	1.50
ATM Installation	Per ATM installed in a Distressed Community	25,000.00	2,500.00	7,500.00

Type of activity	Unit of measurement	Per unit value	BEA program award amount per activity: Non CDFIs	BEA program award amount per activity: CDFIs
ATM Operation	Per ATM operated in a Distressed Community.	2,500.00	250.00	750.00
Branch Opening	Per branch opened in a Distressed Community.	250,000.00	25,000.00	75,000.00
ETAs	Per ETA opened	50.00	5.00	15.00
IDAs	Per IDA opened	100.00	10.00	30.00
First Accounts	Per First Account opened	280.00	28.00	84.00

For the purpose of this NOFA, and in keeping with 12 CFR 1806.201(b)(3)–(4) of the BEA Program Regulations, the Fund will assign a priority factor of 2.0 for Financial Services provided to Low- and Moderate-Income individuals in Distressed Communities.

An Applicant may derive the total percentage of Low- and Moderate-Income individuals who are recipients of Financial Services by either: (1) Collecting income data on its Financial Services customers; (2) certifying that the Applicant reasonably believes that such customers are Low- and Moderate-Income individuals and providing a brief analytical narrative with information describing how the Applicant made this determination; or (3) using the Fund's methodology described below.

The Fund has developed a methodology for estimating the number of Low- and Moderate-Income Financial Service customers rather than requiring Applicants to collect data on the actual income levels of its Financial Service customers. For both the Baseline Period and the Assessment Period, the value of Financial Services shall be derived based on the total number of new accounts, transactions or other eligible service multiplied by a per unit value of such services. This number shall be multiplied by the total percentage of Low- and Moderate-Income individuals who are residents of the census tracts where the Financial Service was provided (*e.g.*, bank branch, ATM location). Such census tract must be part of a Distressed Community. The Help Desk includes a new component that will provide the needed census tracts data and make the calculations for Applicants. The Help Desk can be found at *http://www.cdfifundhelp.gov* or *http://www.treas.gov/cdfi.*

IX. Information-Gathering Sessions

The Fund recently convened information gathering sessions in four cities, Los Angeles (June 21, 2000), Dallas (June 23, 2000), New York (June 28, 2000), and Chicago (June 30, 2000), to discuss possible changes to the BEA Program Regulations, gather facts and information, and seek input from individual attendees on how to improve the BEA Program. The Fund published a Notice in the **Federal Register** on June 7, 2000 to inform the general public about the meetings and mailed written notices to 1999 and 2000 BEA Program Applicants and currently certified CDFIs.

Among the topics discussed by session participants were: (1) Whether the BEA Program should change the 6-month Baseline Period and Assessment Period to a 12-month Baseline Period and Assessment Period; (2) whether the Fund should conduct a "pre-selection" process whereby it would select program participants prior to the beginning of an Assessment Period, with the Fund issuing a commitment letter to such participants, subject to successful completion of the activities discussed in BEA Program applications; (3) whether the Fund should give additional consideration in the form of higher selection priority and/or greater award amounts to Applicants that provide debt financing to CDFIs with, relatively speaking, more favorable terms (*e.g.*, being lower priced or more flexible); (4) whether the Fund should give additional consideration in the form of higher selection priority and/or greater award amounts to Applicants that carry out Development and Service Activities that are targeted to serve Low- and Moderate-Income Residents of a Distressed Community or that create high community development impact in a Distressed Community; (5) whether the Fund should simplify the process for reporting Financial Service activities; and (6) what types of products, services or programs should be included in the definition of a First Account to attract customers who currently do not have a banking relationship with a mainstream financial institution.

Participants expressed a wide variety of opinions on each of the topics and provided valuable feedback to the Fund. Some of the comments concerning how the Fund calculates provision of Financial Services and the establishment of First Accounts as Qualified Activities have been incorporated into this NOFA. The Fund is currently considering whether, in light of the views expressed, any additional proposed changes to the BEA Program should be included in a revised interim rule.

X. Waivers

First, for the purpose of streamlining the application process and reducing burdens on Applicants, and pursuant to 12 CFR 1806.104, the Fund hereby waives the regulatory requirement that Applicants submit the items described at 12 CFR 1806.206(b)(1), (4) and (7). Specifically, for the purpose of this NOFA, an Applicant is not required to submit: (1) copies of its certificate of insurance issued by the Federal Deposit Insurance Corporation, articles of incorporation, Federal or state-issued bank or thrift charter, by-laws and other establishing documents for the purpose of establishing eligibility for an award; (2) a copy of its most recent Report of Condition or Thrift Financial Report; or (3) a copy of its most recent annual report. The Fund has waived the requirement that these items be submitted with the application because the Federal Deposit Insurance Corporation will conduct a verification of eligibility for the Fund based on information it has collected from insured depository institutions. Further, each Applicant's total asset size will be obtained by the Fund through other publicly available data sources (specifically, the Fund will use data reported through the Federal Deposit Insurance Corporation's website).

Second, for the purpose of this NOFA and the NOFA published in the **Federal Register** on September 1, 1999 (64 FR 48062), the Fund is waiving two of the requirements set forth in 12 CFR 1806.103(m) of the BEA Program Regulations. Section 1806.103(m) provides that an Applicant may receive an award under the BEA Program for assistance provided to an uncertified CDFI that, at the time of the Qualified Activity, does not meet the CDFI

eligibility requirements if: (1) The Applicant requires the uncertified CDFI to refrain from using the assistance provided until the entity is certified; (2) the uncertified CDFI is certified by the end of the applicable Assessment Period; and (3) the Applicant retains the option of recapturing said assistance in the event the uncertified CDFI is not certified by the end of the applicable Assessment Period.

The Fund believes that waiving the first requirement will further the purposes of the Act. Specifically, the Conference Report underlying the Act provides that Congress intended the BEA Program to affect immediately economically distressed communities through infusion of private dollars as loans, services, and technical assistance to, and equity investments in, CDFIs. The Fund believes the requirement that an uncertified CDFI refrain from using the assistance would defeat the purposes of the Act by delaying the uncertified CDFI's ability to use such capital for projects that are intended to catalyze urban and rural economic revitalization.

The Fund also believes that there is good cause to waive the third requirement. First, requiring an Applicant to retain the option of recapturing assistance in the event the uncertified CDFI is not certified by the end of the applicable Assessment Period is a matter of business judgment best left to the Applicants themselves. Second, it potentially imposes added paperwork burdens on Applicants that use standardized loan or investment agreements.

As a result, if an Applicant provides assistance to an uncertified CDFI during the applicable Assessment Period, such assistance may be eligible for an award under the BEA Program if the Fund certifies the entity by the end of the applicable Assessment Period.

Catalog of Federal Domestic Assistance: 21.021

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806

Dated: August 29, 2000.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

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Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement for the Juvenile Sex Offender Training and Technical Assistance Initiative; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1294]

Program Announcement for the Juvenile Sex Offender Training and Technical Assistance Initiative

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications for the Juvenile Sex Offender Training and Technical Assistance Initiative. The purpose of the initiative is to provide training and technical assistance support that increases the accuracy of information about juvenile sex offending, leading to improved prevention, intervention, and treatment services.

DATES: Applications must be received October 23, 2000.

ADDRESSES: All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The *application kit* is also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/about.html#kit. (See "Format" in the program announcement for instructions on application standards.)

FOR FURTHER INFORMATION CONTACT: Gail Olezene, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–305–9234. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this program is to provide States, territories, and the District of Columbia with training and technical assistance support that increases the accuracy of information about the nature, extent, and impact of juvenile sex offending in order to improve the responses of elected public officials, public and private agencies and organizations, private citizens, and parents to juvenile sex offending.

Background

Today, the early identification of sexually abusive behaviors poses the risk that juveniles will be labeled as "sex offenders" for life (Hunter, 1996; Ryan, 1995, 1999). One reason for this result is a lack of understanding about the frequency, scope, and nature of juvenile sex offending. The public and the juvenile justice system often react to the term "juvenile sex offending" with an intensity usually reserved for only the most aggressive sexual acts. Knowledge about adult sex offenders is often thought to apply to all sex offenders, regardless of the age of the offender or the victim. The very small number of behaviors classified as serious or violent juvenile sex offenses appears to be disproportionately influencing public policy for all juveniles charged with sex offenses. The resulting public policy decisions have the potential to be harmful to effective prevention, intervention, and treatment for all juvenile sex offenders (JSO's).

The amount of data on the nature, prevalence, and frequency of juvenile sexual offending is limited. According to Dr. J. Shaw, there is evidence of a significant increase in the reports of juvenile sexual aggression and sexual abuse by juveniles. Sexual assault is one of the fastest growing violent crimes in the United States. Approximately one out of three women and one out of seven men will be sexually victimized before they reach 18 years of age. Studies of adult sex offenders show that the majority self-report the onset of sexual offending behavior before 18 years of age. Approximately 20 percent of all rapes and 30 to 50 percent of child molestations are committed by youth under age 18. Studies of adolescent sex offenders have shown that the majority commit their first sexual offense before they are 15 years old and not infrequently before the age of 12, and there are increasing reports of preadolescent sexual abusers (Shaw, 2000).

In some jurisdictions, younger children who engage in sexual abuse are falling through the cracks even after they are identified because they are considered too young to come under the jurisdiction of the juvenile court and the behaviors do not involve family members; thus, they do not meet criteria for either law enforcement or family services resources (Ryan, 1989, 1998; Ryan and Lane, 1991, 1997; Widom, 1996; Williams, 1995). Unfortunately, some jurisdictions are responding to these situations by developing new policies and procedures that may not be in the best interests of children and families, such as notifying a neighborhood that a child of age 7 is a juvenile sex offender.

The spectrum of sexually inappropriate behaviors ranges from various forms of sexual harassment and noncontact sexual behaviors, such as obscene phone calls, exhibitionism, and voyeurism, to varying degrees of sexual aggression that involve direct sexual contact, including frottage, fondling, digital and penile penetration, fellatio, sodomy, and other aggressive sexual acts (Shaw, 2000). Given this wide range of behaviors, the term "juvenile sexual offender" has come to include not only these identified behaviors but other behaviors that could be classified as "normal sexual acting out" based on the developmental stage or maturity level of a youth.

Communities have become much more sensitive to occurrences of sexual harassment and abuse among juveniles and are much less tolerant of such behavior. Citizens are demanding higher accountability for juvenile sexual offenders, and legislation providing stricter penalties is being enacted. The public's perception is that juvenile sex offenders cannot be successfully treated and that these youth will require lifelong management. The reaction to juvenile sex offenders on the part of many community groups, such as legislators, health and human services personnel, juvenile justice personnel, teachers, and other educators, appears to depend on how that group defines a juvenile sex offender.

Children and adolescents sampled in detention centers, residential treatment programs, and outpatient clinics report different spectra of sexually offensive behavior. Ryan et al. (1996) found in a survey of sexually abusive youth from diverse outpatient and residential programs that they had participated in a wide range of sexual offenses. Seventy percent of the sexual offenses involved penetration and/or oral-genital behavior, 35 percent vaginal or anal penetration without oral-genital contact, 14.7 percent oral-genital contact, and 18 percent penetration and oral-genital contact. Studies of outpatient populations of juvenile sexual abusers indicate that the most common sexual offenses are fondling or "indecent liberties" (40 to 60 percent), rape and/or sodomy (20 to 40 percent), and noncontact sexual offenses, (5 to 10 percent) (Fehrenbach et al., 1986). The average juvenile sex offender younger than 18 years of age has committed eight to nine sexual offenses and averaged four to seven victims (Abel et al., 1986; Shaw et al., 1993). Child-serving institutions have become more aware of the occurrence of sexually abusive behaviors in both the general population and in at-risk groups of children (Brick et al., 1989; Brick, Montfort, and Blume, 1993: Haugaard, 1996; Haugaard and

Tilley, 1988; Lamb and Coakley, 1993). Generally States are aware of the risk that children in State placements with histories of sexually abusive behavior pose to other juveniles and make an effort to address this risk by implementing various safeguards. Additionally, all children in out-of-home care appear to represent a very high-risk group because of the convergence of multiple etiological risk factors (Ryan, 1989, 1998; Ryan and Lane, 1991, 1997; Widom, 1996; Williams, 1995).

According to Dr. Gail Ryan (1998:649):

> There are at least three distinct categories of juvenile sex offenders. Some who might have engaged in sexually abusive behavior for a period of time and would have discontinued the behaviors as they matured are being discovered and treated. Some are at risk to continue these behaviors across the lifespan but will be deterred by legal accountability and/or treatment. And a third group is those who are likely to continue to pose a risk because we do not yet know how to treat them successfully. At present, no empirical measure allows a determination of which group a particular youth falls into at the point of discovery, although during the treatment process, many clinicians develop a sense of which kids are highest risk. As treatment providers become better able to distinguish these differences, they will become better able to provide a continuum of meaningful responses that will shape and guide children in this important aspect of their development.

Early studies of inappropriate sexual behavior by juveniles attempted to define a child molester syndrome or profile (Shoor et al., 1966). However, the complex, multidimensional nature of sexually aggressive behavior by a juvenile made it difficult to set up a predictable taxonomy. Presently, there is no evidence that any one profile or typology is characteristic of juvenile sex offenders (Becker and Hunter, 1993; Levin and Stava, 1987).

As noted by Dr. Barbara Bonner and Dr. Mark Chaffin (1998:314):

> Fifteen years ago when providers began working with adolescent sex offenders, treatment providers faced many obstacles. There were no treatment models uniquely designed for this population. No true experimental research had been used to evaluate the effectiveness of either customary or specialized interventions. There were no prospective data on the natural course of behavior in these youngsters, and there were no prospective data on the risk factors for developing the behavior. No empirically derived typologies existed and no actuarial risk assessment was available. The need to respond to social problems does not wait for better data.

Thus, the need to address this issue was very much on the minds of many practitioners, and "the treatment community borrowed treatment models used with other populations with other problems, they mixed and matched, they used informed guesswork, tried to be guided by theory and professional standards, and they hoped" (Bonner and Chaffin, 1998:314).

The treatment community has evolved, and a body of conventional wisdom about juvenile sex offenders has become accepted as fact. This conventional wisdom includes the beliefs that sex-offender-specific treatment is the only acceptable and effective approach for teens and preteen children who have engaged in inappropriate sexual behavior; that a history of personal victimization is usually present in juvenile sex offenders, which is a direct cause of abusive sexual behavior and must be a focus of treatment; that denial must be overcome; that hard, face-to-face confrontation is synonymous with good therapy; and that treatment must be long term and involve highly restrictive conditions. Other elements of the conventional wisdom about juvenile sex offending include the beliefs that deceit and deviant arousal, deviant fantasies, and grooming are intrinsic features; that parents and families of offenders are generally dysfunctional; that long-term residential placement is commonly required; that the behaviors always involve an offense cycle or pattern that must be identified; that these teenagers and their parents must recognize that they have a compulsive, incurable, and life-long disorder; and that these youngsters are such dangerous predatory offenders that neighborhoods must be notified of their presence. Despite the wide acceptance of these beliefs, it is the opinion of Dr. Bonner and other experts that empirical scientific support for each of these tenets of conventional wisdom is either minimal or nonexistent (Bonner and Chaffin, 1998).

Policies and practices for preventing, intervening, and treating juvenile sex offenders often are implemented based on conventional wisdom and accepted beliefs without the benefit of sound, empirical knowledge. What should the next step be in this area? It is clear that the public, media, practitioners, the juvenile justice community, educators, and others need to be better informed about the nature and scope of juvenile sex offending so that appropriate steps can be taken to effectively address this problem. Accordingly, OJJDP is establishing the Juvenile Sex Offender Training and Technical Assistance Initiative. This action is authorized under the technical assistance and training authority of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*).

Goal

To increase the accessibility and strategic use of accurate information about the nature, extent, and impact of juvenile sex offending for the purpose of fostering development of sound policies and procedures for the prevention, intervention, and treatment of juvenile sex offenders.

Objectives

The objectives of this training and technical assistance initiative will be achieved over a 3-year project period:

Year 1

- Develop a definition for the term "juvenile sex offender (JSO)" that can serve as the basis for training and technical assistance materials to be produced under this initiative.
- Identify portals of entry for juvenile sex offenders into the juvenile justice and other human services treatment systems.
- Identify and establish a "Working Group" to support and collaborate on the content of the training and other aspects of working with JSO's.
- Identify key groups and organizations that are not portals of entry, but who impact or interact with JSO's.
- Use existing research to inform the preparation of educational materials.
- Develop training objectives for each group identified as a portal of entry.

Year 2

- Develop a full range of informational materials (Fact Sheets, Bulletins, Public Service Announcements, videos, etc.) for dissemination to various audiences to help them respond to JSO's in an appropriate and constructive manner.
- Conduct a pilot test of educational materials developed for all portals of entry groups.
- Develop a standard for collaboration and coordination among key players who work with JSO's.

Year 3

- Identify and catalog national organizations that may have an impact on addressing juvenile sex offending.
- Collect information on current assessment tools used with JSO's.
- Establish collaboratives to continuously disseminate current information on this topic.
- Collect and disseminate information about current laws,

treatment programs, and recently enacted policies that are related, either directly or indirectly, to juvenile sex offending.

• Identify the potential for juvenile offender and victim impact on local communities given local policies regarding community notification.

Program Strategy and Deliverables

OJJDP will award a single cooperative agreement for an initial 12-month budget period within a 36-month project period. The purpose of this award is to identify and train State and local policymakers and practitioners who staff organizations and agencies with responsibility for assessing children identified as engaging in sexually inappropriate behavior.

During the first year of the project, the following tasks will be accomplished:

• Defining the term "juvenile sex offender" based on medical, developmental, psychological, legal, and juvenile justice guidance.

• Developing a matrix that identifies and categorizes the portals of entry in relation to the type of information required by each to constructively perform its functions.

• Identifying subject matter experts and key organizations to serve on a "Working Group" to share current information on JSO's.

• Preparing an inventory of professional organizations and practitioners who may have an impact on JSO's.

• Establishing a link with other governmental organizations or groups that may inform this initiative.

• Developing training curriculums for each group identified as a portal of entry.

The strategy in year 2 would add the following tasks:

• Preparing and disseminating information products, including Fact Sheets, Bulletins, videos, and public service announcements that educate the public on key issues related to JSO's.

• Identifying and cataloging current treatment programs and assessment instruments and providing contact information.

• Conducting a pilot test of the curriculum for each identified portal of entry.

• Developing a standard for coordination and collaboration that is user-friendly, easy to follow, and may be implemented at the local level.

Year 3 would require continuation, updating, and completion of all tasks identified in the previous 2 years and add the following tasks:

• Developing a network of national organizations that might receive and further disseminate information about JSO's.

• Developing memorandums of agreement with organizations to address components of this initiative that cannot be fully addressed by the selected provider.

• Identifying and cataloging current laws and policies enacted by States and local jurisdictions in response to JSO's.

• Identifying the potential impact of JSO's and victims on local communities by examining past practices.

• Maintaining a link with other governmental organizations or groups whose expertise may help to inform this initiative.

A detailed implementation plan that outlines major tasks, milestones, and deliverables to be undertaken during the first 12 months of the project must be included with the application. In addition to the deliverables listed above and the content of the training and technical assistance design, the provider must describe how it will address the following:

• A diverse consultant pool with expertise related to juvenile sex offending.

• A protocol for the delivery of training and technical assistance.

• A plan for making reference and referral resources available online.

• A consolidated inventory of training and technical assistance materials on JSO's.

• Quarterly status reports in narrative form that address the tasks accomplished, pending requests, and major objectives for the upcoming quarter.

• An annual report that includes financial and programmatic summaries.

• A coordination protocol to facilitate communication, shared planning, and scheduling of events related to the other Office of Justice Programs JSO grantees.

• A dissemination plan for States and local units of government for documents to be prepared.

Modifications regarding these deliverables may be proposed if assessments reveal new or different issues or obstacles or if any deliverables are determined not to meet the previously outlined objectives as effectively and efficiently as an alternative product might.

Guiding Principles

Training and technical assistance must be developed in a manner consistent with the following principles:

• Support empowerment of States and local communities to disseminate information.

• Create user-friendly, user-appropriate materials.

• Use uniform protocols for needs assessment, delivery of training and technical assistance, evaluation, tracking, and follow-up.

• Base curriculum development on adult learning theory and deliver training within the context of an interactive structure.

• Coordinate effective and efficient use of expertise on a range of subject matter related to JSO's.

Scope of Work

The basic elements of the work outlined in the objectives should be accomplished under this cooperative agreement. Applicants are expected to present a service delivery design that incorporates these elements and brings innovation and cohesiveness to a strategy for organizing, implementing, and delivering a training and technical assistance program.

Eligibility Requirements

OJJDP invites applications from public and private agencies, organizations, institutions, or individuals with demonstrated experience in the management of a national training and technical assistance effort and the capability to undertake activities related to this solicitation. Private, for-profit organizations are eligible to apply provided that they agree to waive any profit or fee.

Selection Criteria

Applicants will be evaluated and rated by a peer review panel on the quality of the project design, project management plan, the organizational capacity to deliver the activities, and appropriateness and cost effectiveness of the budget. OJJDP may conduct onsite interviews with up to five applicants submitting the highest scoring proposals.

Needs To Be Addressed (20 points)

Given the broad scope of the issue of juvenile sex offending and the critical players from various disciplines, the applicant must clearly communicate an understanding and knowledge of the perceived needs of the project and their planned response to past perceptions created by treatment providers and other experts. The applicant must convey an understanding of the expected results of this effort, of possible obstacles that need to be overcome to meet or exceed program objectives, and of how collaboration will enhance the achievement of the performance objectives.

Goals and Objectives (10 points)

The applicant must provide succinct statements that demonstrate an understanding of each objective and elaborate on the tasks associated with each. The strategy to address each objective must be clearly defined, expressed in operational terms, and measurable.

Project Design (25 points)

The applicant must present a project design that constitutes a measurable approach to meeting the goals and objectives of this program. The design must include a plan that describes how training and technical assistance will be implemented and that discusses the proposed organizational framework. The applicant should include background data that justifies the program design and implementation plan.

The application should include a work plan that describes specific tasks, procedures, timelines, milestones, and products to be completed as part of the implementation plan. The work plan should include a chart that specifies each milestone, related tasks, lead staff responsible, incremental benchmarks, and dates for task completion. The design must indicate how project objectives will be met and deliverables will be produced and how both will be measured. The work plan should also include a cohesive, well-developed plan for providing knowledge, products, and other materials to key players in this initiative. The design must provide protocols for assessing training and technical assistance needs and protocols to be used in the actual delivery of technical assistance. It must also describe the process and structure that will be used in curriculum development and demonstrate how adult learning theory will be employed in its design.

Applicants should identify obstacles to achieving expected results and include alternative plans and rationales. OJJDP will consider recommendations for modification and enhancement of the products to be delivered to accommodate cost considerations. When such recommendations are made, justification and alternatives should be proposed. The competitiveness of applications will be enhanced when such modifications and/or enhancements reflect the concept in a compelling and innovative form.

Project Management (25 points)

In addition to the basic project management structure, applicants should specifically describe coordination and collaboration efforts related to the project. Applicants must describe an organization framework, managerial structure, and staffing approach that has the capacity to effectively execute the JSO initiative. Applicants should discuss their history of involvement in addressing juvenile sex offenders and any other involvement that demonstrates their management capabilities. The applicant's management structure and staffing must be adequate and appropriate for the successful implementation of the project. Competitiveness will be enhanced by applicants who can clearly demonstrate previous experience with JSO efforts. Emphasis will be placed on applicants' specific descriptions of organizational and management capabilities to support the cooperative agreement.

Organizational Capability (10 points)

The organizational capability should include (1) an established track record in delivering training and technical assistance on a national level; (2) a demonstrated capability to produce—within a short timeframe—a range of general and specific technical resource materials that are user-friendly and professional; (3) a base consultant pool of experts in juvenile and criminal justice and juvenile sex offender issues; (4) a plan for identifying and assigning this project, immediately following award of the cooperative agreement, to an expert manager who has experience in designing and delivering training and technical assistance to juvenile justice, mental health, or youth service professionals, and experience with State and local agency program delivery structures; (5) a capability for production or reproduction of various types of printed materials—or plans for contractual access to such capability; and (6) a description of the organizational capability to effectively manage a national training and technical assistance program, including an indication of where this program would be located within the organization's structure and the rationale for this placement.

Budget (10 points)

The budget should be planned over a 12-month project period. Applicants must provide a proposed budget and budget narrative that is complete, detailed, reasonable, allowable, and cost effective for the activities to be undertaken.

Format

The narrative portion of this application must not exceed 45 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8 by 11-inch paper, double spaced on one side of the paper in a standard 12-point font. These standards are necessary to maintain a fair and uniform standard among all applicants. If the narrative does not conform to these standards, the application will be ineligible for consideration.

Award Period

This project will be funded as a cooperative agreement for 36 months in three 12-month budget periods. Funding after the initial budget period will depend on grantee performance, availability of funds, and other criteria established at the time of the initial award.

Award Amount

Up to $350,000 is available to support award of a cooperative agreement to a single provider for the initial 12-month budget period.

Delivery Instructions

All application packages must be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. *Note: In the lower left hand corner of the envelope, applicants must clearly write "Juvenile Sex Offenders Training and Technical Assistance Initiative."*

Due Date

Applicants are responsible for ensuring that the original and three copies of the proposal are received by 5 p.m. ET 45 days from date of publication in the **Federal Register**.

Contact

For further information, contact Gail Olezene, Program Manager, Training and Technical Assistance Division, OJJDP, 202–305–9234, or send an e-mail query to olezenec@ojp.usdoj.gov.

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Dated: August 30, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–22657 Filed 9–1–00; 8:45 am]

BILLING CODE 4410–18–P

Federal Register

Tuesday,
September 5, 2000

Part V

The President

Proclamation 7336—America Goes Back to School, 2000

Federal Register
Vol. 65, No. 172
Tuesday, September 5, 2000

Presidential Documents

Title 3—

The President

Proclamation 7336 of August 31, 2000

America Goes Back to School, 2000

By the President of the United States of America

A Proclamation

For America's students, the new school year is a time for learning lessons, making friends, and setting goals. For America's parents, it is a time to focus on the role education plays in their children's lives and future. And for our Nation, it is a time to strengthen our efforts to improve the quality of education and to make America's schools safe, nurturing places where children can reach their full potential.

This year a record 53 million young people will fill our schools—the highest enrollment in our Nation's history—and communities across the country are struggling to provide adequate classroom space and to hire qualified teachers to meet students' needs. To assist local school districts in meeting these critical challenges, my Administration's proposed education budget for fiscal 2001 includes tax credits and loans to help communities build and modernize 6,000 schools and to make emergency repairs to another 25,000. We have also requested an additional $1.75 billion to meet our goal of hiring 100,000 qualified teachers to reduce class size in the early grades and $1 billion in new funds to recruit and train high-quality teachers for every grade level. And we have proposed dramatic increases in the Federal investment in after-school and summer school programs, safe and drug-free schools, and support to help States and districts to turn around failing schools. These critical investments, coupled with my Administration's ongoing commitment to high standards and accountability, will help children across the country reach their full potential.

While the Federal Government has an important role to play in improving the quality of American education, it is the efforts of local school boards, families, and communities, working together, that make the crucial difference in preparing our children for the future. Parents who read with their children, monitor homework and out-of-school activities, demand high academic standards and challenging coursework, and encourage greater community support and investment in school activities have an enormous impact on their children's academic success. Similarly, businesses with family-friendly leave policies, community organizations that offer after-school programs, libraries that provide access to computers and educational software, volunteers who help children read or who serve as mentors—all of these people and programs help create supportive environments that enable students to make the most of their education.

America Goes Back to School is a nationwide initiative, in partnership with the Department of Education, to encourage and support family and community involvement in improving children's learning. The initiative's theme, "Challenge Our Students and They Will Soar," reflects the importance of setting high expectations for America's young people and reminds us that we each have a role to play in providing our Nation's students with the schools, teachers, and standards they need to achieve their dreams and succeed in this new century.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 4 through September 10, 2000, as a time when America Goes Back to School. I encourage parents, schools, community and State leaders, businesses, civic and religious organizations, and the people of the United States to observe this period with appropriate ceremonies and activities expressing support for high academic standards and promoting family and community involvement in providing a quality education for every child.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

[FR Doc. 00–22913
Filed 9–1–00; 11:50 am]
Billing code 3195–01–P

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H.R. 3519/P.L. 106–264
Global AIDS and Tuberculosis Relief Act of 2000 (Aug. 19, 2000; 114 Stat. 748)
Last List August 22, 2000

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

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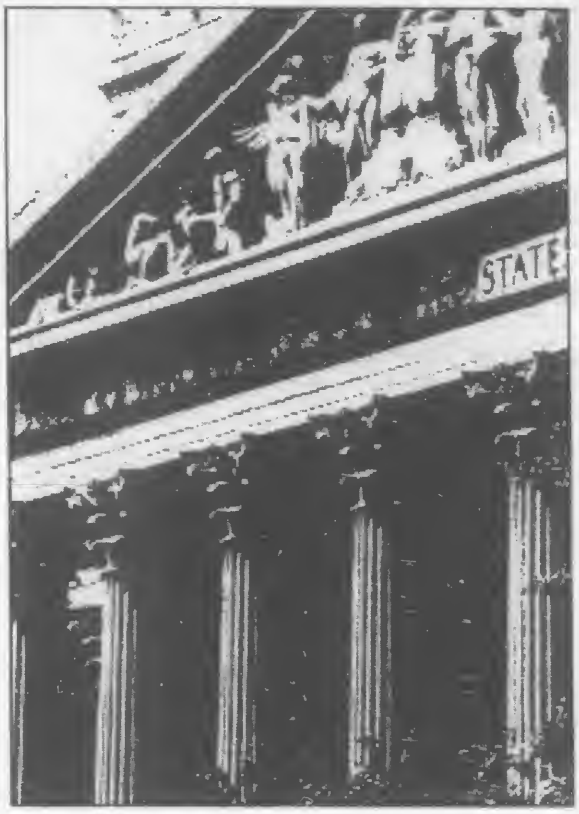

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