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Title 3—

The President

Presidential Determination No. 00–2 of October 21, 1999

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority and conditions contained in section 540(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (Public Law 105–277), as provided for in the Joint Resolution Making Continuing Appropriations for the Fiscal Year 2000, and for Other Purposes, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 21, 1999.

[FR Doc. 99–28608
Filed 10–29–99; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 00–3 of October 25, 1999

Presidential Determination on the Proposed Agreement for Cooperation Between the United States of America and Australia Concerning Technology for the Separation of Isotopes of Uranium by Laser Excitation

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the United States of America and Australia Concerning Technology for the Separation of Isotopes of Uranium by Laser Excitation, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 25, 1999.

[FR Doc. 99–28609
Filed 10–29–99; 8:45 am]
Billing code 4710–10–M

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV99–905–6 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes the minimum size requirement for red seedless grapefruit grown in Florida and for red seedless grapefruit imported into the United States from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended the change for Florida grapefruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This change allows handlers and importers to ship size 56 red seedless grapefruit through November 12, 2000, and is expected to maximize grapefruit shipments to fresh market channels.

DATES: Effective November 8, 1999, through November 12, 2000; comments received by January 3, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket.clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade requirement for red seedless grapefruit is U.S. No. 1. The current minimum size requirement for domestic shipments is size 56 (at least 3$^{5}/_{16}$ inches in diameter) through November 7, 1999, and size 48 (3$^{9}/_{16}$ inches in diameter) thereafter. The current minimum size for export shipments is size 56 throughout the year.

This interim final rule invites comments on a change to the order's rules and regulations relaxing the minimum size requirement for domestic shipments of red seedless grapefruit. This action allows for the continued shipment of size 56 red seedless grapefruit. This rule relaxes the

minimum size from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter) through November 12, 2000. Absent this change, the minimum size would revert to size 48 (3$^{9}/_{16}$ inches in diameter) on November 8, 1999. The Committee met on August 31, 1999, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule adjusts Table I to establish a minimum size of 56 through November 12, 2000. Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). This rule also adjusts § 944.106 to establish a minimum size of 56 through November 12, 2000. Export requirements for Florida red seedless grapefruit are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and demand. While the official crop estimate will not be available until October, the supply of red seedless grapefruit is expected to be below last year's production of 28.7 million 1$^{3}/_{5}$ bushel boxes. Acreage has declined in recent years from 81,348 acres in 1996, to 76,025 acres in 1998, to 71,731 acres in 1999. Losses are due to groves being abandoned due to economic reasons, unhealthy groves being removed and replanted, and sick and diseased trees being removed from healthy, productive groves and not being replanted.

The Committee anticipates that fresh shipments of red seedless grapefruit will be at or below last season's level of 14.6 million $^{4}/_{5}$ bushel cartons. The quality of this year's crop is anticipated to be normal to above normal. However, the fruit is expected to be misshapen more than normal. All growing districts appear to be affected by poorly shaped fruit, which could reduce the packout percentages for the 1999–2000 crop. The individual fruit size for the upcoming crop is projected to be a little smaller than normal, but not as small as last season. The Committee reports that it expects fresh market demand to be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1999–2000 season.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, because it will permit Florida grapefruit handlers to make available the sizes of fruit needed to meet consumer needs. Matching the sizes with consumer needs is consistent with current and anticipated demand for the 1999–2000 season, and will maximize shipments to fresh market channels.

The Committee believes that domestic markets have been developed for size 56 fruit and that the industry should continue to supply those markets. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments which will continue at size 56 throughout the season. The largest market for size 56 small red seedless grapefruit is for export.

Committee members stated that during the first 11 weeks of the season (September 20 through December 5), there will likely be a volume regulation in effect to limit the volume of small red seedless grapefruit that can enter the fresh market. The Department has since issued such a rule, which was published on September 17, 1999 (64 FR 50419). The Committee believes that the percentage size regulation has been helpful in reducing the negative effects of size 56 on the domestic market, and that no additional restrictions are needed for the upcoming season.

In addition, the currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

Based on available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56 through November 12, 2000. This rule will have a beneficial impact on producers and handlers since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet anticipated market demand for the 1999–2000 season. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation will also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106. This rule relaxes the minimum size requirement for imported red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56) until November 12, 2000, to reflect the relaxation being made under the order for red seedless grapefruit grown in Florida.

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

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

There are approximately 80 grapefruit handlers subject to regulation under the order, approximately 11,000 growers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on the industry and Committee data for the 1998–99 season, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 1998–99 season was around $7.60 per $^{4}/_{5}$ bushel carton, and total fresh shipments for the 1998–99 season are estimated at 14.6 million cartons of red seedless grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler

receipts. Using the average f.o.b. price, about 80 percent of the Florida grapefruit handlers could be considered small businesses under the SBA definition and about 20 percent of the handlers could be considered large businesses. The majority of grapefruit handlers, growers, and importers may be classified as small entities.

Handlers in Florida shipped approximately 37,395,000 4/5 bushel cartons of grapefruit to the fresh market during the 1998–99 season. Of these cartons, about 22,123,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 16,720,000 cartons. During the period 1994 through 1998, imports have averaged about 600,000 cartons a season. Imports account for less than five percent of domestic shipments.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule relaxes the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter) through November 12, 2000. No change is being made in the minimum size 56 requirement for export shipments. Absent this rule, the minimum size requirement for domestic shipments would have reverted to size 48 on November 8, 1999. The motion to allow shipments of size 56 red seedless grapefruit through November 12, 2000, was passed by the Committee unanimously. In addition, there is a volume regulation in effect for the first 11 weeks of the 1999–2000 season (September 22 through December 5) that limits the volume of small red seedless grapefruit that can enter the fresh market (64 FR 50419, September 17, 1999).

This rule will have a positive impact on affected entities. This action allows for the continued shipment of size 56 red seedless grapefruit. This change is not expected to increase costs associated with the order requirements, or the grapefruit import regulation.

This rule relaxes the minimum size from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter) through November 12, 2000. This change will allow handlers to continue to ship size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. Matching the sizes that can be shipped with consumer needs is consistent with current and anticipated demand for the 1999–2000 season, and will provide for the maximization of shipments to fresh market channels.

The currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to handlers to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

This change will allow for the continued shipment of size 56 red seedless grapefruit. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers regardless of their size of operation.

During the period October 1, 1998, through June 30, 1999, imports of grapefruit totaled 15,500 metric tons (approximately 800,000 cartons). Recent yearly data indicate that imports during July, August, and September are typically negligible. Therefore, the 1998–99 season imports should not vary significantly from 15,500 metric tons. The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Most imported grapefruit enters the United States from October through May.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, this change must also be applicable to imported grapefruit. This rule relaxes the minimum size for imported grapefruit to size 56. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers because it allows shipments of size 56 red seedless grapefruit into U.S. markets through November 12, 2000.

The Committee considered one alternative to this action. The Committee discussed relaxing the minimum size to size 56 on a permanent basis rather than just for a year. Members said that each season is different, and they prefer to consider this issue on a yearly basis. Therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information collection requirements and duplication by industry and public sectors.

In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 31, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the size requirement currently prescribed under the marketing order for Florida citrus and the grapefruit import regulation. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that

good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule relaxes the minimum size requirement for red seedless grapefruit grown in Florida and red seedless grapefruit imported into the United States; (2) this action is similar to actions taken in past seasons and grapefruit handlers and importers need no additional time to comply with the relaxed size requirement; (3) Florida grapefruit handlers are aware of this action which was unanimously recommended by the Committee; (4) shipments of the 1999–2000 season Florida red seedless grapefruit crop are underway; and (5) this rule provides a 60-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR Parts 905 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. In § 905.306, Table I in paragraph (a) is amended by revising the entry for "Seedless, red" to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * * * * * *			
GRAPEFRUIT			
* * * * * * *			
Seedless, red	11/8/99–11/12/00	U.S. No. 1	3 5/16
	On and after 11/13/00	U.S. No. 1	3 9/16
* * * * * * *			

* * * * * *

PART 944—FRUITS; IMPORT REGULATIONS

4. In § 944.106(a), the table is amended by revising the entry for "Seedless, red" to read as follows:

§ 944.106 Grapefruit import regulation.

(a) * * *

Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * * * * * *			
Seedless, red	11/8/99–11/12/00	U.S. No. 1	3 5/16
	On and after 11/13/00	U.S. No. 1	3 9/16
* * * * * * *			

* * * * * * *

Dated: October 25, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–28372 Filed 10–29–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–4 IFR]

Almonds Grown in California; Revisions to Requirements Regarding Credit For Promotion and Advertising Activities

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The changes are intended to encourage and support almond product development and thus increase the demand for almonds. The changes also clarify existing regulations.

DATES: This interim final rule becomes effective November 2, 1999; comments received by January 3, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the requirements regarding credit for promotion and advertising activities prescribed under § 981.441 of the administrative rules and regulations of the order. The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The changes also clarify existing regulations. The changes are intended to encourage and support almond product development and thus increase the demand for almonds. This rule was unanimously recommended by the Board at a meeting on July 12, 1999, with additional justification approved via facsimile vote during the week of August 30, 1999.

The order provides authority for the Board to incur expenses for administering the order and to collect assessments from handlers to cover these expenses. Section 981.41(a) provides authority for the Board to conduct marketing promotion projects, including projects involving paid advertising. Section 981.41(c) allows the Board to credit a handler's assessment obligation with all or a portion of his or her direct expenditures for marketing promotion, including paid advertising, that promotes the sale of almonds, almond products, or their uses. Section 981.41(e) allows the Board to prescribe rules and regulations regarding such credit for market promotion, including paid advertising activities. Those regulations are prescribed in § 981.441.

The Department implemented several Board-recommended changes to the regulations regarding the criteria that must be met in order for handlers to receive credit for their promotional activities in July 1999 (64 FR 41023, July 29, 1999). However, the Department did not implement one Board recommendation concerning credit for promoting almond products at that time because of concerns regarding the lack of specified criteria to be used in reviewing claims and concerns about the claims review process. The Board and its staff reconsidered the issue, further developed the concept, and submitted a revised recommendation addressing the Department's concerns.

This rule implements the revised recommendation.

Current regulations crediting handlers' promotion of almond products limit any such credit to the portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. This limitation, as specified in § 981.441(e)(iv), was included because it was believed that while promoting almond products was important, such activity might also promote and increase sales of other ingredients in the product. Therefore, the amount of credit handlers could receive was established at less than the maximum of 66⅔ percent. This maximum level is specified in § 981.441(a).

The almond industry has historically been one of rapid growth. Recent years have been no exception, as almond acreage has increased substantially in the last decade. When coupled with increasing yields, production is expected to achieve record levels in coming years. The industry is faced with the prospect of selling these larger crops at a profitable return to producers. In order to achieve this, it is recognized that consumption and demand for almonds must be increased. Because a substantial portion of almonds are used as ingredients, an important method of increasing almond consumption is through increasing the consumption of almond products.

The current regulations allowing only partial credit for promotion of all almond products are believed to have created a disincentive for handlers to develop, create and promote almond products. Therefore, the Board recommended and the Department is implementing revised regulations to allow maximum credit-back to handlers for promoting almond products, under certain conditions.

After the effective date of this interim final rule, handlers will be able to receive credit against their assessment obligations in an amount not to exceed 66⅔ percent of their proven expenditures for qualified activities for promotion of almond products. In order to receive this level of credit, the product must be owned or distributed by the handler and such ownership or distributorship must be stated on the package. Handler ownership or distributorship is required in order to eliminate the possible occurrence of utilizing industry funds to promote businesses outside the almond industry.

In addition, the product must display the handler's brand, or the words "California Almonds" on the primary, face label. This requirement is intended to ensure that the clear intent is to promote the consumption and use of California almonds, which is the basic requirement for all promotion under the almond order.

Under the rule, maximum credit is not allowed for promotion of mixed nut products. In the case of mixed nuts, and for other promotional activities of almond products that do not meet the aforementioned criteria, the amount of credit allowed continues to be the lesser of 66⅔ percent of the handler's actual payment or that portion of the product weight represented by almonds. Mixed nuts do not qualify for the maximum credit because the thrust of eligible credit-back promotion activities is to promote the consumption and use of California almonds, not other nuts. Also, many almond handlers are involved in handling and marketing other nuts, and almond funds could possibly be used to promote other nut industries and other nuts. Therefore, mixed nuts continue to be subject to the reduced level of credit-back based on the portion of the product weight represented by almonds. Accordingly, appropriate changes have been made to § 981.441(e)(4).

Finally, this rule adds specific language to the introductory text of § 981.441(e)(4) clarifying that no promotion of almonds or almond products shall be eligible for credit-back if the promotion results in price discounting of the handler's product. An example of price discounting is as follows. A retail store routinely places advertisements in a local newspaper for various products in an attempt to attract customers. The advertisement includes a handler's almonds. The handler makes arrangements with the retailer to pay for the advertisement. In essence, this "discounts" the price of the product to the retailer. While these types of arrangements occur, it is not the intent of promotion under the almond order to subsidize such activities through the credit-back program. Price discounting has not been allowed under the program, and this rule adds specific language to the regulations for clarity.

The Board recommended that this rule be applied retroactively to August 1, 1999. This would allow the revised regulations to apply to all promotional activities conducted from the beginning of the 1999–2000 crop year forward. The crop year began August 1, 1999, and ends July 31, 2000. Section 981.441 specifies the procedures that the Board follows in granting credit and billing handlers. The effective date of the rule is one day after publication in the **Federal Register**, and the provisions of this revised regulation will be applied at that time. Handler activities were conducted under program parameters in effect prior to the effective date of this interim final rule. Therefore, those parameters for activities conducted prior to this rule's effective date should be followed. Accordingly, handlers promoting products containing almonds prior to the effective date of this rule will be eligible to receive Credit-Back based on the portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. For activities conducted on or after the effective date of this rule, the activities must meet the revised criteria, and handlers will be eligible to receive Credit-Back at the maximum of 66⅔ percent for promoting almond products, if the percent for promoting almond products, if the activities meet the revised criteria in this rule. Submission of documentation should continue to be made in accordance with the provisions of the regulations as amended by the final rule that appeared in the July 29, 1999, **Federal Register** at 64 FR 41023.

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

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

There are approximately 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the most current data available, about 54 percent of the handlers ship under $5,000,000 worth of almonds and 46 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $195,000. In view of the foregoing, it can be

concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule revises the requirements regarding credit for promotion and advertising activities prescribed under § 981.441 of the administrative rules and regulations of the order, and clarifies the intent of one aspect of the existing regulations. The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The revisions also clarify existing regulations regarding disallowing promotional activities that result in price discounting. The changes are intended to encourage and support almond product development and thus increase the demand for almonds.

Current regulations concerning crediting handlers' promotion of almond products limit any such credit to the portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. This limitation was included because it was believed that while promoting almond products was important, such activity may also promote and increase sales of other ingredients in the product. Therefore, the amount of credit handlers could receive was established at less than the maximum of 66⅔ percent. It is now believed that the potential for increasing demand for almonds by providing incentive through allowing maximum credit alleviates the prior concerns regarding promoting other ingredients.

Regarding the impact of this rule on affected entities, the changes specified herein regarding credit for product development are designed to provide incentive to almond handlers to create, develop, and promote almond products. Almonds are widely used as ingredients in other products, thus an important method of increasing almond consumption and demand is through increasing sales of almond products. Handlers in the almond industry will be rewarded for their innovation in developing almond products, while the entire industry will benefit from the resulting increased demand. Thus, the impact on all growers and handlers in the almond industry is expected to be positive. This is an additional tool for the industry to use to increase demand for their product in the face of increasing supplies.

The changes regarding price discounting clarify that handlers can not receive credit-back for promotional activities that result in price discounting of product. This activity has not been allowed under the regulations as it does not meet the intent of the program; the changes merely clarify the existing regulations. Disallowing price discounting results in a more efficient and effective use of industry promotion funds.

Alternatives to the changes were considered. One alternative was to leave the regulations as they currently exist. However, this does not address the issue of providing incentive and encouragement to handlers to promote almond products. Another alternative was to allow maximum credit only for new or unique products, with the Board to determine what products fit that description. This alternative was initially recommended by the Board but was not implemented by the Department because of concerns regarding the lack of specified criteria to be used in reviewing claims, and concerns about the claims review process. A third alternative considered was to allow maximum credit-back for all promotions concerning almond products. However, it was determined that certain criteria should be applied to product promotions to meet the intent of the program, for the following reasons. To receive maximum credit-back, the product must be owned or distributed by the handler, to ensure that credit is not granted for promoting products or businesses outside the almond industry. Packages must be labeled with the handler's name or the words "California Almonds" to help ensure the intent is to promote the consumption and use of California almonds, which is the basic requirement for all promotion under the order. Mixed nuts are subject to a reduced level of credit-back because handlers are and can be involved in handling and marketing other nuts, and if maximum credit were allowed, this could result in almond industry funds being used to promote other nut industries and other nuts. Moreover, the thrust of eligible credit-back promotion activities is to promote the consumption of California almonds, not other nuts, and it would not be appropriate to give mixed nut products the full 66⅔ credit.

This rule imposes no additional reporting or recordkeeping requirements on either small or large almond handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Additionally, the Board meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the July 12, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board formed a task force in July 1998 to review its credit-back advertising program. The task force met periodically during the following months to review the program and consider appropriate changes. The task force presented its recommendations to the Board's Public Relations and Advertising Committee on November 13, 1998, and that committee presented its recommendations to the Board on December 2, 1998, and March 5, 1999. The Department subsequently implemented all of the Board's recommended changes, except for those relating to almond products. The Board again recommended the changes associated with almond products on July 12, 1999, and its Public Relations and Advertising Committee and staff developed further clarification and justification for those changes which were approved by a Board facsimile vote during the week of August 30, 1999. All of these meetings were open to the public, and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

address in the FOR FURTHER INFORMATION CONTACT section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the credit-back promotional requirements prescribed under the California almond marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The almond crop year began on August 1, 1999, and this rule should be in effect as closely as possible to that time so handlers can avail themselves of the additional opportunities for receiving promotional credit; (2) these changes were unanimously recommended by the Board and interested persons had an opportunity to provide input; (3) handlers are aware of these changes which were recommended at a public meeting; and (4) a 60-day comment period is provided for in this rule and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 981.441, the introductory text of paragraph (e)(4) and paragraph (e)(4)(iv) are revised and a new paragraph (e)(4)(v) is added to read as follows:

§ 981.441 Credit for market promotion activities, including paid advertising.

* * * * *

(e) * * *

(4) Credit-Back shall be granted for those qualified activities specified below, except that Credit-Back will not be allowed in any case for travel expenses, or for any promotional activities that result in price discounting.

* * * * *

(iv) Except as otherwise provided in paragraph (e)(4)(v) of this section, when products containing almonds are promoted, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less: *Provided*, That, except for mixed nut products, the amount of Credit-Back for qualified promotional activities for products containing almonds shall be granted at 66⅔ percent of proven expenditures, if the product is owned or distributed by the handler and such ownership or distributorship is stated on the package: *Provided Further*, That to receive any level of credit, the product must display the handler's name, the handler's brand, or the words "California Almonds" on the primary, face label.

(v) When products containing almonds are promoted prior to November 2, 1999, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less.

* * * * *

Dated: October 25, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–28373 Filed 10–29–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1439 and 1477

RIN 0560–AF82

1999 Livestock Indemnity Program; 1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule sets forth the terms and conditions for the 1999 Livestock Indemnity Program, authorized by the 1999 Emergency Supplemental Appropriations Act. The program will provide monetary assistance to producers for livestock losses due to natural disasters occurring between May 2, 1998, and May 21, 1999. Also, this rule sets out a clarifying change regarding offsets and withholdings from payments made in the crop disaster program operated under 7 CFR Part 1477.

DATES: Effective November 1, 1999. Comments on this rule and information collection must be received by January 3, 2000, in order to be assured of consideration.

ADDRESSES: Comments should be mailed to: Diane Sharp, Director, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517, telephone (202) 720–7641, or send by e-mail to: rebecca_davis@wdc.fsa.usda.gov. Comments may be inspected in the Office of the Director, PECD, FSA, USDA, Room 4752 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Rebecca Davis at (202) 720–7641.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

Title: Livestock Indemnity Program
OMB Control Number: 0560–0179
Type of Request: Reinstatement and revision of a previously approved information collection.

Abstract: The information collected under OMB Control Number 0560–0179, as identified above, is all that is currently demanded by FSA to meet administrative and statutory requirements for the Livestock Indemnity Program. Information collected from livestock producers will be used by CCC to approve or determine the eligibility and amount of assistance in accordance with this subpart. The CCC considers the information collected essential to prudent eligibility and assistance determinations. Failure to make sound decisions in providing livestock indemnity program payments would result in inaccurate payments to livestock producers and losses to the Government.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Livestock Producers
Estimated number of Respondents: 3,600

Estimated Number of Responses per Respondent: 2

Estimated Total Annual Burden on Respondents: 7,200 hours

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Diane Sharp, Director, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC. 20250–0517, telephone (202) 720–7641.

Executive Order 12612

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 not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

Livestock Indemnity Program

This interim rule sets forth regulations that implement the livestock indemnity provisions contained in the 1999 Emergency Supplemental Appropriations Act ("1999 Act"), enacted on May 21, 1999. The 1999 Act appropriated $3,000,000 to the Secretary of Agriculture to implement a livestock indemnity program for qualifying livestock losses occurring in the period beginning on May 2, 1998, and ending on May 21, 1999. The losses must be due to natural disasters declared by the President or Secretary of Agriculture. The 1999 Act specifies that to qualify the declaration request must have been submitted by May 21, 1999, and that, to the extent practicable, benefits must be provided in a manner similar to that used for the livestock indemnity programs carried out by the Secretary during 1997 and 1998. Also, the 1999 Act specifies that benefits under the new program will be subject, to the extent practicable, to the gross income means test and payment limitations of the 1996-crop Disaster Reserve Assistance Program (DRAP). Under the 1996 DRAP, no person could receive more than $50,000 in payments and no person could receive any payment at all if that person's annual gross revenue exceeded $2.5 million.

Rules for the 1999 livestock indemnity program will be codified in 7 CFR part 1439.301, *et seq.*, which was recently reorganized by a rule published on March 19, 1999, 64 FR 13497. Consistent with the operation of the 1997 and 1998 livestock indemnity programs, payment rates will vary by class of livestock involved and the payment rate will be a percentage of the assigned market price for the class. Should eligible claims exceed the available funds, the claims will, to the extent practicable, be prorated. Losses will be compensable only to the extent that they were caused by the disaster and were in excess of normal losses for the operation for the particular livestock category involved.

Crop Disaster Regulations

In addition, this rule makes slight changes to the crop loss disaster regulations that were published on April 15, 1999, at 64 FR 18553. The rules for that program are codified in 7 CFR part 1477. The changes are intended to make it clear that the agency can take withholding action based on a request by another agency and to insure that there is maximum flexibility with respect to offset and withholding issues to insure that funds are not released in a manner which would be contrary to the public interest, as determined by the Secretary. On a related issue, the rule would also add a reference to 28 U.S.C. 2301 to waive a prohibition on eligibility for federal benefits by persons with a judgment lien against their property under the crop loss disaster program (although such a payment might be applied against their outstanding debt to the government).

Effective Date of the Rule

Because the livestock indemnity program was provided for by emergency legislation and is designed to provide emergency relief to farmers, it has been determined that to delay the effective date of the rule, and hence the date on which payments could be made, pending further procedure, including any Congressional review as might otherwise be required by the Small Business Regulatory Enforcement Act, would be contrary to the public interest. Accordingly, with respect to the portion of the rule dealing with the livestock indemnity program, it has been determined that this rule should be effective on publication. This same determination had been made with respect to changes in the offset and withholding provisions of part 1477 as those changes involve claims adjustments for current debts which are owing or may be owing to the government. To the extent that there is a change in the adopted rule for part

1477 as a result of the comments, the claims could be repaid or adjusted as needed.

List of Subjects for 7 CFR Part 1439

Animal feed, Disaster assistance, Livestock, Reporting and Recordkeeping Requirements.

Accordingly, 7 CFR Chapter XIV is amended as follows:

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

1. The Authority citation for part 1439 is amended to read as follows:

Authority: 7 U.S.C 1427a; 15 U.S.C. 714b, and 714c; Sec. 1102 and 1103, Pub. L. 105–277; Pub. L. 106–31.

2. Part 1439 is amended by adding Subpart—Livestock Indemnity Program to read as follows:.

Subpart—Livestock Indemnity Program

Sec.

1439.301 Applicability
1439.302 Administration
1439.303 Definitions
1439.304 Sign-up period
1439.305 Proof of loss
1439.306 Indemnity benefits
1439.307 Availability of funds
1439.308 Limitations on payments

§ 1439.301 Applicability

This subpart sets forth the terms and conditions applicable to the 1999 Livestock Indemnity Program. Benefits will be provided under this subpart only for losses (deaths) of livestock occurring in the period from May 2, 1998 through May 21, 1999, as a result of a natural disaster in a county included in the geographic area covered by a qualifying natural disaster declaration issued by the President of the United States or the Secretary of Agriculture of the United States. Losses in contiguous counties, or any other counties not the subject of the declaration, will not be compensable. To be a qualifying declaration, the declaration must have been issued upon a request submitted prior to May 21, 1999. Producers will be compensated by livestock category as established by CCC. The producer's loss must be the result of the declared disaster and in excess of the normal losses, established by CCC, for the producer's livestock operation.

§ 1439.202 Administration

Where circumstances preclude compliance with § 1439.304 due to circumstances beyond the applicant's control, the county or State committee may request that relief be granted by the Deputy Administrator under this section. In such cases, except for statutory deadlines and other statutory requirements, the Deputy Administrator may, in order to more equitably accomplish the goals of this subpart, waive or modify deadlines and other program requirements if the failure to meet such deadlines or other requirements does not adversely affect operation of the program.

§ 1439.303 Definitions

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The terms defined in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Application means the Form CCC–661, Livestock Indemnity Program Application.

Livestock means beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food and buffalo and beefalo when maintained on the same basis and in the same manner as beef cattle maintained for commercial slaughter.

Livestock producer means one who possesses a beneficial interest in eligible livestock as defined in this subpart, has a financial risk in the eligible livestock, and is a citizen of, or legal resident alien in, the United States. A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in, the United States, if such cooperative, corporation, partnership, or joint operation owns or jointly owns eligible livestock or poultry, will be considered livestock producers. Any Native American tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act and Education Assistance Act); any Native American organization or entity chartered under the Indian Reorganization Act or chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 will be considered livestock producers.

§ 1439.304 Sign-up period

A request for benefits under this subpart must be submitted to the Commodity Credit Corporation (CCC) at the Farm Service Agency county office serving the county where the livestock loss occurred. All applications and supporting documentation must be filed in the county office prior to the close of business on October 31, 1999, or such other date as established by CCC.

§ 1439.305 Proof of loss

(a) Livestock producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the:

(1) Loss of eligible livestock occurred in an eligible county in the area of Presidential designation or Secretarial declaration;

(2) That the death of the eligible livestock was reasonably related to the recognized natural disaster; and

(3) The death of the livestock occurred between May 2, 1998, and May 21, 1999, inclusive.

(b) The livestock producer shall provide any available supporting documents that will assist the county committee, or as requested by the county committee, in verifying the loss and quantity of eligible livestock that perished in the natural disaster. Examples of supporting documentation include, but are not limited to: Purchase records, veterinarian receipts, bank loan papers, rendering truck certificates, Federal Emergency Management Agency and National Guard records, auction barn receipts, and any other documents available to confirm the presence of the livestock and subsequent losses. Certifications by third parties or the producer and other such documentation as the county committee determines to be necessary in order to verify the information provided by the producer may be submitted, subject to review and approval by the county committee. Third-party verifications may be accepted only if the producer certifies in writing that there is no other documentation available. Third-party verification must be signed by the party that is verifying the information. Failure to provide documentation that is satisfactory to the county committee will result in the disapproval of the application by the county committee.

(c) Livestock producers shall certify the accuracy of the information provided. All information provided is subject to verification and spot checks by the CCC. A failure to provide information requested by the county committee or by agency officials is cause for denial of any application filed under this part.

§ 1439.306 Indemnity benefits

(a) Livestock indemnity payments for losses of eligible livestock as determined by CCC are authorized to be made to livestock producers who file an application for the specific livestock

category in accordance with instructions issued by the Deputy Administrator, if the:

(1) Livestock producer submits an approved proof of loss in accordance with § 1439.305; and

(2) County or State committee determines that because of an eligible disaster condition the livestock producer had a loss in the specific livestock category in excess of the normal mortality rate established by CCC, based on the number of animals in the livestock category that were in the producer's inventory at the time of the disaster.

(b) If the number of losses in the animal category exceeds the normal mortality rate established by CCC for such category, the loss of livestock that shall be used in making a payment shall be the number of animal losses in the animal category that exceed the normal mortality threshold established by CCC.

(c) Payments shall be calculated by multiplying the national payment rate for the livestock category as determined by CCC, by the number of qualifying animals determined under (b) of this section. Adjustments, if necessary, shall apply in accordance with § 1439.307.

(d) Payments which are earned by a person under the livestock indemnity program may be assigned in accordance with the provisions of part 1404 of this chapter.

§ 1439.307 Availability of funds

In the event that the total amount of eligible claims submitted under this subpart exceeds the $3,000,000 appropriation, then each payment shall be reduced by a uniform national percentage. Such payment reductions shall be applied after the imposition of applicable payment limitation provisions.

§ 1439.308 Limitations on payments

No person, as determined in accordance with part 1400 of this chapter, may receive benefits under this subpart in excess of $50,000 for any year and no person may receive payments under this subpart for losses for the producer has received or will receive compensation under any other program provided for in this part. Payments under this part for other losses shall not, however, reduce the amount payable under this part. As provided for in § 1439.11, no person shall be eligible to receive any payment under this subpart if such person's annual gross revenue exceeds $2.5 million.

PART 1477—1998 SINGLE-YEAR AND MULTI-YEAR CROP LOSS DISASTER ASSISTANCE PROGRAM

3. The authority citation for part 1477 continues to read as follows:

Authority: Sec. 1101 and 1102 of Pub. L. 105–277, 112 Stat. 2681; 15 U.S.C 714b and 714c.

§ 1477.109 [Amended]

4. Section 1477.109 is amended by:

a. Removing the phrase "in accordance with § 1403.8" in paragraph (a) and adding the phrase "using the standard set forth in § 1403.8(b) (1)–(7)" in its place,

b. Removing the phrase "will be made" in paragraph (k) and adding the phrase "may be made" in its place,

c. Removing the second sentence of paragraph (k) and,

d. By adding a new paragraph (m) to read as follows:

* * * * *

(m) For the purposes of 28 U.S.C. 3201(e), the restriction on receipt of funds or benefits under this program is waived; however, this waiver shall not preclude withholding or offsetting where it is deemed by the Deputy Administrator to be appropriate.

Signed at Washington, DC, on October 20, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–28369 Filed 10–29–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 99–008–1]

Tuberculosis in Cattle and Bison; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations to allow zones within a State to be assigned different risk statuses and to clarify the conditions for assigning a particular risk status for bovine tuberculosis. We are also amending the regulations to increase the amount of testing that must be done before certain cattle and bison may be moved interstate. These changes are necessary to help prevent the spread of tuberculosis and to further the progress of the domestic bovine tuberculosis eradication program.

DATES: This interim rule is effective October 20, 1999. We invite you to comment on this docket. We will consider all comments that we receive by January 3, 2000.

The incorporation by reference listed in this rule is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–008–1, 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. 99–008–1.

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 rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, VS, APHIS, USDA, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by Mycobacterium bovis. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

At the beginning of this century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock.

Federal regulations implementing this program are contained in 9 CFR part 77, "Tuberculosis" (referred to below as the regulations), and in the "Uniform

Methods and Rules—Bovine Tuberculosis Eradication" (UMR), which is incorporated by reference into the regulations. (This interim rule updates the edition that is incorporated, as discussed below under the heading "UMR.") The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of bovine tuberculosis.

Restrictions on the interstate movement of cattle and bison not known to be affected with or exposed to tuberculosis have been based on whether the animals are moved from States designated as accredited-free States, accredited-free (suspended) States, modified accredited States, or nonmodified accredited States. Although the restrictions on the interstate movement of captive cervids are currently not based on the tuberculosis status of a State, we are developing regulations that would establish such a relationship.

The status of a State is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards for cattle and bison contained in the UMR. Currently, a State's tuberculosis status is not determined or affected by evidence of tuberculosis in cervids.

Section 77.1 of the regulations has defined and listed accredited-free, accredited-free (suspended), modified accredited, and nonmodified accredited States. Prior to this interim rule, these terms were defined in the regulations as follows:

Accredited-free State. An accredited-free State was defined as a State that has had no findings of tuberculosis in any cattle or bison anywhere in the State for at least 5 years. (As noted above, there are currently no defined State tuberculosis statuses with regard to cervids.) The definition also provided that a State must comply with all the provisions of the UMR regarding accredited-free States. These provisions include a requirement that the State demonstrate annually that an adequate amount of testing and slaughter surveillance is done in that State to discover any bovine tuberculosis that might be present. The definition of accredited-free State provided that detection of tuberculosis in any cattle or bison in the State would result in suspension of the State's accredited-free status, and that, if tuberculosis were detected in two or more herds anywhere in the State within a 48-month period, the State's accredited-free status would be downgraded.

Accredited-free (suspended) State. An accredited-free (suspended) State was defined as an accredited-free State in which tuberculosis has been detected in any cattle or bison.

Modified accredited State. A modified accredited State was defined as a State that complies with all the provisions of the UMR regarding modified accredited States. The UMR requires that, to retain modified accredited status, a State must demonstrate annually that an adequate amount of testing and slaughter surveillance is done in that State to discover any bovine tuberculosis that might be present. The UMR also provides that disclosure of tuberculosis in the State or failure of the State to take progressive steps to comply with the UMR to seek out and eliminate bovine tuberculosis will be cause for downgrading of the modified accredited status. Further, the regulations provided that if any livestock other than cattle or bison were included in a newly assembled herd on a premises where a tuberculous herd had been depopulated, the State must apply the UMR herd test requirements for such newly assembled herds to those other livestock as well as to cattle and bison in the new herd.

Nonmodified accredited State. A nonmodified accredited State was defined as a State that has not received accredited-free status or modified accredited status.

Need for this Interim Rule

Prior to this interim rule, the regulations did not provide for different areas, or zones, within a State to be assigned different tuberculosis risk statuses. There have historically been a number of reasons for not considering areas smaller than a State for regulatory purposes. Generally, the legal authority to issue and enforce regulations concerning tuberculosis under the animal quarantine laws is limited to interstate, rather than intrastate, movement of regulated products and animals. Additionally, each State has in place its own administrative and veterinary infrastructure and legal authority for monitoring, detecting, recording, controlling, and eradicating animal diseases in that State. This centralization of veterinary efforts at the State level has made it natural to consider one uniform disease status for each State. Further, because State borders are clearly defined legal boundaries, they have lent themselves to delineating a readily identifiable area for disease risk.

However, just as the United States has recently begun to recognize regions smaller than a country when considering the risk of disease from imports from a foreign country,[1] there are compelling reasons for considering areas smaller than a State when considering tuberculosis risk in the United States.

Under the regulations prior to this interim rule, if tuberculosis was determined to exist in any part of a State, the entire State was designated as being at risk. This "all or nothing" approach did not always provide sufficient incentive for a State to restrict movement of tuberculosis-susceptible animals from high-risk areas within the State and to otherwise rapidly contain the disease and move toward eradication. Failure to rapidly identify and address high-risk areas significantly increased the risk of tuberculosis spread among livestock.

In this interim rule, we establish requirements (discussed below) for achieving APHIS recognition of zones within a State for the purpose of tuberculosis status. Providing for zones will allow for APHIS recognition of distinct tuberculosis risk levels within a State. For example, a State that contains several herds that are affected with tuberculosis in an identifiable area might nonetheless qualify for accredited-free status in the rest of the State, provided it meets certain conditions, discussed below, to ensure containment and eradication of the disease in the affected area. This will give States the incentive to isolate affected areas from the rest of the State and to implement effective containment and eradication measures, thereby decreasing tuberculosis risk intrastate and interstate.

The key criteria in establishing a "zone" for the purpose of tuberculosis risk status are that the boundary of the zone be identifiable and that it be located where factors such as physical barriers, distance, lack of livestock, or animal movement controls make it unlikely that tuberculosis will be transmitted across the boundary. The criteria we will apply to identify a zone within a State are the same criteria we use to identify regions in foreign countries.

In § 77.1 of this interim rule, we define zone as a defined geographic land area identifiable by geological, political, manmade, or surveyed boundaries, with mechanisms of disease spread, epidemiological characteristics, and the ability to control the movement

[1] See, for example, "64 FR 34155–34168, Docket No. 97–086–2, Recognition of Animal Disease Status of Regions in the European Union," published June 25, 1999, and "64 FR 8755–8761, Docket No. 97–079–1, Importation of Pork and Pork Products from Yucatan and Sonora, Mexico," published February 23, 1999.

of animals across the boundaries of the zone taken into account. By "mechanisms of disease spread," we mean the ways in which tuberculosis can be transmitted to animals, such as in aerosol fashion or through ingestion of contaminated food or water. "Epidemiological characteristics" include factors such as the presence or absence of livestock in a zone, the distance between animals within and outside a zone, the prevalence of disease within a zone, and the density of potential wildlife hosts within a zone.

We consider mechanisms of disease spread and epidemiological characteristics important components in how the boundaries of a zone will be determined, because a zone by its nature should present a different level of disease risk than the zone from which it is distinguished. Therefore, the distance between livestock in two different zones and the manner in which the disease is transmitted need to be considered in determining where to draw a boundary that clearly divides two areas with differing tuberculosis risks.

In § 77.8 of this interim rule, we set forth conditions and procedures for requesting that the Administrator of APHIS designate part of a State as a zone that has a different tuberculosis status than the rest of the State. We provide that a State animal health official may request such designation of a distinct zone if the State has the legal and financial resources to implement and enforce a tuberculosis eradication program; has the infrastructure, laws, and regulations to require and ensure tuberculosis cases are reported to State and Federal regulatory authorities; and maintains or will maintain clinical and epidemiological surveillance of animal species at risk of tuberculosis at a rate that allows detection of tuberculosis in the overall population of livestock herds in each zone at a 2 percent prevalence rate (the average prevalence in a herd containing infected animals) with 95 percent confidence. We require that the zone being requested be delineated by State animal health authorities, subject to approval of the zone by the Administrator. Because of the amount of monitoring and movement controls necessary for a State to adequately administer different status zones, we are limiting the number of zones allowable in each State to two.

Definitions

The definitions for terms used in part 77 are contained in § 77.1. We are revising the definitions of accredited-free State, accredited-free (suspended) State, modified accredited State, and nonmodified accredited State, so that each category applies to zones as well as to entire States. Additionally, we are making some formatting changes to those definitions, such as moving lists of States and the requirements for applying for status redesignation or renewal from the definitions section to other sections of the regulations. We are also including in the definition of accredited-free State or zone a provision that was previously set forth in the UMR and that was incorporated by reference into the regulations. Under this provision, a modified accredited or nonmodified accredited State or zone that was previously accredited-free can regain accredited-free status in 2 years provided it meets the following requirements: The State or zone has zero prevalence of affected cattle and bison herds; all herds of cattle and bison affected with tuberculosis have been depopulated; there have been no findings of tuberculosis in cattle or bison for 2 years from the depopulation of the last infected herd in the State or zone; and the State or zone complies with the provisions of the UMR. Because this provision was included in the UMR, which has been incorporated by reference into the regulations, it was in effect prior to this interim rule. We are also making certain substantive changes to the definitions, which we discuss below.

Accredited-free State or zone. The definition of accredited-free State until now has provided that to establish or maintain such status, a State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years and must comply with all of the provisions of the UMR. In this interim rule, we are retaining that requirement and are further defining an accredited-free State or zone as one that has zero percent prevalence of affected cattle and bison herds. Although zero percent prevalence may be self-evident in a State or zone in which no affected herds have been diagnosed, we consider it useful to include such a criterion to be consistent with our use of disease prevalence in defining modified accredited State or zone, discussed below. In this interim rule, we add a definition of zero percent prevalence in § 77.1 to mean "no finding of tuberculosis in any cattle or bison herd in the State or zone."

Accredited-free (suspended) State or zone. We are not revising the definition of accredited-free (suspended) State, except to apply it to zones as well as States and to move the requirements for regaining accredited-free status to § 77.3.

Modified accredited State or zone. The regulations until now defined a modified accredited State as one that complies with all of the provisions of the UMR regarding modified accredited States. Under the regulations prior to this interim rule, it was not always clear what standards a State needed to meet to achieve modified accredited status. With the establishment of zones under this interim rule, it is essential to the prevention of tuberculosis spread in States that this lack of clarity be rectified so that States are clear regarding the standards for achieving status and, consequently, regarding the restrictions they must impose on the movement of livestock from zones that do not meet the standards for modified accredited or accredited-free status.

In this interim rule, we are specifying that, in addition to complying with the UMR, a modified accredited State or zone is one in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for the most recent 2 years. However, because it is likely that some zones will contain a relatively small number of herds, we are also providing, as discussed below, that in a State or zone with fewer than 30,000 herds, the Administrator, upon his or her review, may allow the State or zone to have up to 3 affected herds for each of the most recent 2 years, if the Administrator determines that the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone are adequate to prevent the spread of tuberculosis.

We are using 0.01 percent of the total number of herds in the State or zone as the standard maximum allowable percentage of affected herds. This number represents a progression from the requirements of the tuberculosis eradication program of the 1940's, when 0.5 percent was considered an acceptable maximum percentage of prevalence of affected herds. Since that time, significant gains in the tuberculosis eradication program have consistently reduced the national percentage of herds affected with tuberculosis, so that today the national percentage stands at approximately 0.0002 percent. With such minimal tuberculosis prevalence, we consider it appropriate to set the allowable maximum prevalence percentage at 0.01 percent, which we believe will contribute to continued progress in the tuberculosis program, while not being so impractically stringent that States will lose incentive to achieve or retain modified accredited status.

Although we consider a maximum of 0.01 percent to be appropriate in most cases, we recognize there are situations where the circumstances in a State or zone might warrant some deviation from that standard. For instance, the requirement for less than 0.01 percent prevalence means that, for every 10,000 herds in the State or zone, no more than 1 herd can be affected. In a State or zone with fewer than 10,000 herds, even the presence of 1 affected herd would cause the prevalence rate to exceed the allowable maximum. We do not necessarily consider one affected herd to pose a disease risk significant enough to disqualify a State or zone from modified accredited status. Additionally, in some States or zones that do not have a relatively large number of herds (by comparison, some States have as many as 140,000 herds), it is possible that circumstances might warrant a modified accredited State or zone having up to 3 affected herds. The factors the Administrator will consider in determining whether a prevalence level in excess of 0.01 percent is acceptable include (1) how effectively the veterinary infrastructure in the State or zone could respond to the discovery of an affected herd and (2) the risk of transmission of the disease from an affected herd to other herds, based on factors such as the density of the livestock population and patterns of herd distribution. If the Administrator determines that such factors in a State or zone are adequate to prevent the spread of tuberculosis, a State or zone with fewer than 30,000 herds will qualify for modified accredited status even if the percentage of affected herds exceeds 0.01 percent of the total number of herds.

Nonmodified accredited State or zone. We are making no substantive changes to the definition of nonmodified accredited State, other than to make the definition applicable to zones as well as to States.

In addition to the changes to the definitions in § 77.1 that are described above, we are revising that section by adding other definitions. We discuss each of these added terms below as part of our discussion of the regulatory requirements in which they appear.

Designation of Bovine Tuberculosis Status: § 77.2

In § 77.2 of this interim rule, we provide that the Administrator will designate the tuberculosis status of each State according to the criteria listed in subpart A of part 77. The section also provides that the Administrator will give only part of a State a particular designation, upon request of the State, if the Administrator determines that the State meets the requirements of the regulations for establishing zones (discussed below) and enforces restrictions on the intrastate movement of cattle and bison that are substantially the same as our restrictions on the interstate movement of those animals. Additionally, § 77.2 provides that designation of partial State status is dependent on the Administrator's determination that such designation will otherwise be adequate to prevent the interstate spread of tuberculosis.

It is essential that a State that is requesting recognition of a zone have in place effective regulations governing intrastate movement because, in most cases, our authority to regulate the movement of animals and animal products is limited to interstate movement. Therefore, we must be confident that the State will effectively enforce movement between zones within State borders.

Accredited-Free State or Zone Status: § 77.3

In § 77.3(a), we list those States and zones designated as accredited-free. The list of States is the same as that in the regulations in effect prior to this interim rule, except for the addition of an accredited-free zone in Michigan. We discuss below our rationale for designating the zone in Michigan as accredited-free. (See "Recognition of Tuberculosis Status Zones in Michigan.")

In § 77.3(c), we include the provision that formerly appeared in the definition of accredited-free State that the accredited-free status of a State will be suspended if tuberculosis is detected in any one cattle or bison herd in the State and are expanding it to apply to zones as well as States. Similarly, we are moving from the definitions section to § 77.3(c) the provision that if two or more affected herds are detected in an accredited-free State within a 48-month period, the State will be removed from the list of accredited-free States. We are also amending that provision to include zones. We are also amending the requirements for renewing accredited-free status to include zones and are moving the renewal requirements from the definitions in § 77.1 to § 77.3(f).

We are providing in § 77.3(e) that if tuberculosis is diagnosed within an accredited-free State or zone in an animal not specifically included in the regulations and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must adopt a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock and wildlife, the prevention of the spread of the disease to other wildlife and livestock, increased surveillance of tuberculosis in wildlife, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not adopt such a plan within the required 6 months, the State or zone will lose its accredited-free status. We consider this requirement necessary because of the risk of wildlife coming into contact with domestic livestock, both through free-ranging wildlife and wildlife held by the growing number of exhibitors in the United States.

Modified Accredited States or Zones: § 77.4

In § 77.4, we list those States and zones designated as modified accredited and provide the criteria for renewing modified accredited status. The list of States is the same as the list in the regulations in effect prior to this interim rule. The criteria for renewing modified accredited status are also the same, except that they apply to zones as well as States. However, we are adding a provision that if tuberculosis is diagnosed within a modified accredited State or zone in an animal not specifically included in the regulations and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must adopt a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. If a State or zone does not adopt such a plan within the required 6 months, the State or zone will be reclassified as nonmodified accredited.

Nonmodified Accredited States or Zones: § 77.5

Any nonmodified accredited States or zones will be listed in § 77.5. In this interim rule, we are listing one zone in Michigan as nonmodified accredited (discussed below under the heading "Recognition of Tuberculosis Status Zones in Michigan").

Interstate Movement from Accredited-Free States and Zones: § 77.6

Consistent with the regulations in § 77.3 in effect prior to this interim rule, we are providing in new § 77.6 that cattle and bison that are not known to

be infected with or exposed to tuberculosis and that originate in a State or zone listed as accredited-free, accredited-free (suspended), or modified accredited may be moved interstate without restriction.

Interstate Movement from Nonmodified Accredited States and Zones: § 77.7

Under § 77.4 of the regulations in effect prior to this interim rule, cattle and bison not known to be affected with or exposed to tuberculosis that originated in a nonmodified accredited State could be moved interstate only if they met one of the following conditions:

1. The cattle and bison were certified as testing negative to an official tuberculin test conducted within 30 days prior to movement and were identified as specified in the regulations;
2. The cattle and bison were certified as coming from an accredited herd; or
3. The cattle and bison were moved directly to a qualifying slaughtering establishment.

In § 77.7 of this interim rule, we are retaining the second two conditions regarding movement from an accredited herd and movement to slaughter. However, we are revising and clarifying the condition regarding the testing of animals intended for movement and are making testing requirements dependent on the type of animal involved, as discussed below, in order to help prevent the spread of tuberculosis and to further the progress of the tuberculosis eradication program.

As set forth in this interim rule, if the cattle or bison to be moved interstate from a nonmodified accredited State or zone are breeding animals that are not from an accredited herd, they will need to be individually identified and be accompanied by a certificate stating that they have been classified negative to two official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 30 days prior to the date of movement. Until now, such animals had to be tested only once within 30 days prior to the date of movement. However, we consider one test to be insufficient because of the combination of the high or unknown risk of tuberculosis in a nonmodified accredited State or zone and the possibility that an animal that tested negative to one tuberculosis test may have been incubating the disease agent at the time of testing and could develop clinical signs of the disease following the first test.

Under this interim rule, if the cattle or bison are steers or spayed heifers, or are officially identified sexually intact heifers moved to an approved feedlot, they must be accompanied by a certificate stating they have been classified negative to an official tuberculin test that was conducted within 30 days prior to the date of movement. Because of the high or unknown risk of the presence of tuberculosis in a nonmodified accredited State or zone, we consider it necessary that such animals test negative to an official tuberculin test before they are moved interstate so that if they are later found to be infected with the disease, they can be traced back to the source herd. However, we consider one negative test to be sufficient for animals moved through slaughter channels, which reduces the risk of disease spread.

Although our statutory authority is generally limited to interstate movement, one of the conditions for APHIS recognition of zones within a State is that the State has adopted and is enforcing regulations that impose restrictions on the intrastate movement of cattle and bison that are substantially the same as those in the regulations for the interstate movement of cattle and bison. Therefore, for a State to achieve and retain APHIS recognition of zones, it will need to impose requirements on intrastate movement from any nonmodified zone that are substantially the same as the testing requirements described above. We consider such requirements within a State necessary to control any outbreaks of tuberculosis.

In § 77.1, we define *approved feedlot* as a confined area approved jointly by the State animal health official and the Administrator for feeding cattle and bison for slaughter, with no provisions for pasturing or grazing. We define *State animal health official* as the State official responsible for livestock and poultry disease control and eradication programs.

In the condition for movement described above, we refer to heifers that are "officially identified." In the definitions in § 77.1, we define *officially identified* to mean identified by means of an official eartag, individual tattoo, or individual hot brand. We define official eartag to mean an eartag approved by the Administrator as providing unique identification for each individual animal by conforming to the alpha-numeric National Uniform Eartagging System.

Movement of Captive Cervids

The regulations in subpart A of part 77 with regard to tuberculosis apply to cattle and bison. The regulations in subpart B of part 77 apply to captive cervids. As noted above, under § 77.2(b) of this interim rule, one of the conditions for a State to be eligible for APHIS recognition of zones is that it imposes restrictions on the intrastate movement of cattle and bison that are substantially the same as those in the regulations for the interstate movement of cattle and bison. However, as evidenced by the regulations regarding captive cervids in part 77, subpart B, in addition to cattle and bison, captive cervids infected with tuberculosis also pose a significant risk of transmitting tuberculosis to other livestock. Therefore, in § 77.2(b) of this interim rule, we provide that, as a condition for APHIS recognition of zones, a State must also impose intrastate restrictions on the movement of captive cervids that are substantially the same as those in place in part 77, subpart B, for the interstate movement of captive cervids.

Classes or Species of Greater Risk

Although at this time we are applying the provisions of this interim rule in the same way to all cattle and bison, it is possible the Administrator will in the future determine that a specific breed or usage type of cattle or bison poses a significantly greater risk of being a reservoir of tuberculosis than other cattle or bison. For instance, regulations in 9 CFR 93.427(c)(5) prohibit the importation of Holstein steers and Holstein spayed heifers from Mexico. This is because APHIS determined that such dairy cattle pose a greater risk than other cattle of being infected with tuberculosis. In any case where a particular breed or usage type of cattle or bison presents a greater tuberculosis risk than other cattle or bison, it may be necessary to establish requirements for interstate movement for that breed or usage type that are more restrictive than those for other cattle and bison, or it may be necessary to prohibit interstate movement altogether. If such restrictions are necessary, we will publish a rulemaking document to that effect in the **Federal Register**.

Application for Recognition of Tuberculosis Status Zones

In § 77.8(a) of this interim rule, we set forth conditions a State must meet to receive APHIS recognition of an area in the State as a separate zone for tuberculosis status. Unless requested otherwise by a State, we will continue to designate entire States with regard to tuberculosis status. However, we provide that a State animal health official may request at any time that the Administrator designate part of the State as having a different tuberculosis status than the rest of the State, with the

limitation that each State may be divided into no more than two different zones (i.e., one area that differs in status from the rest of the State).

Under the procedures in this interim rule for requesting recognition of a zone, the State will be responsible for delineating the boundaries of the requested zone, subject to approval by the Administrator. As defined in § 77.1, a zone is a defined geographic land area identifiable by geological, political, manmade, or surveyed boundaries, with mechanisms of disease spread, epidemiological characteristics, and the ability to control the movement of animals across the boundaries of the zone taken into account.

To qualify for APHIS recognition of a zone, the State must demonstrate in its request that it has in place an infrastructure, laws, and regulations that require and ensure that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife. Additionally, the State in which the zone is located must have the legal and financial resources to implement and enforce a tuberculosis eradication program.

Further, the State must maintain clinical and epidemiological surveillance of animal species at risk of tuberculosis in each zone in the State, at a rate that allows detection of tuberculosis in the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence. Because 2 percent is the average prevalence in a herd that contains animals infected with tuberculosis, being able to detect such prevalence with 95 percent certainty gives adequate assurance that herds in which tuberculosis is present will be identified. The designated tuberculosis epidemiologist must review reports of all testing for each zone within the State within 30 days of the testing. (In the definitions in § 77.1, we define designated tuberculosis epidemiologist to mean "a State or Federal epidemiologist designated by the Administrator to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and the management of tuberculosis affected herds.")

In § 77.8(a)(3) of this interim rule, we provide that a State seeking APHIS recognition of a zone with regard to tuberculosis must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request. Such a memorandum of understanding is necessary to address epidemiological circumstances that apply to that particular State. For instance, in a State in which free-ranging wildlife may be a reservoir of tuberculosis, it may be necessary to conduct baseline surveillance among such wildlife; whereas in a State with less of a risk of tuberculosis in wildlife, such surveillance may not be necessary.

Retention of Recognition of Tuberculosis Status Zones

In § 77.8(b) we provide that designation of zones within a State will be subject to annual review by the Administrator and that, in order to retain APHIS recognition of a zone, a State must continue to meet the requirements for achieving recognition of the zone and must retain for 2 years all certificates that are required by the regulations for the movement of cattle, bison, and captive cervids.

Recognition of Tuberculosis Status Zones in Michigan

The conditions for obtaining APHIS recognition of a tuberculosis status zone within a State are discussed above. In this interim rule, we are recognizing such zones in Michigan. Michigan has demonstrated to APHIS that it has the resources to enforce a tuberculosis eradication program and to ensure that diagnoses of tuberculosis are reported to State and Federal authorities. Additionally, Michigan has demonstrated it is capable of maintaining surveillance that allows detection of tuberculosis in the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence. Michigan will enter into a memorandum of understanding with APHIS regarding any conditions for zone recognition particular to that State's circumstances.

Michigan: In Michigan, the smaller of two zones in the State is bounded as follows: Starting at the juncture of State Route 55 and Interstate 75, head northwest and north along Interstate 75 to the Straits of Mackinac, then southeast and south along the shoreline of Michigan to the eastern terminus of State Route 55, then west along State Route 55 to Interstate 75. The second zone in Michigan is comprised of the rest of the State.

State animal health officials in Michigan have demonstrated to APHIS that, except for the smaller zone, the State meets the criteria for accredited-free status set forth in the definition of *accredited free* in this interim rule. Except for the smaller zone, Michigan has zero percent prevalence of affected cattle or bison herds and has had no findings of tuberculosis in any cattle or bison for the past 5 years. Additionally, the State complies with the provisions of the UMR. Because the smaller zone in Michigan does not meet the requirements for either accredited-free or modified accredited, it is being listed as nonmodified accredited.

UMR

Among the definitions in § 77.1 is a definition of *Uniform Methods and Rules—Bovine Tuberculosis Eradication*. The edition of the UMR referred to in that definition was approved by APHIS on February 3, 1989, and was approved for incorporation by reference into the Code of Federal Regulations (CFR) by the Director of the Federal Register. On January 22, 1999, an updated edition of the UMR was approved by APHIS. Among other provisions, the updated edition includes changes to the tuberculosis eradication program discussed in this interim rule with regard to split-State tuberculosis status. This interim rule revises the definition of Uniform *Methods and Rules—Bovine Tuberculosis Eradication* to reflect the incorporation by reference of the January 22, 1999, edition of the UMR.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. We believe that failure to provide the option for "split-State status" would hinder the progress of the tuberculosis eradication program in this country and increase the likelihood of the spread of the disease. Under the regulations prior to this interim rule, if tuberculosis was determined to exist in any part of a State, the entire State was designated as being at risk. This "all or nothing" approach did not always provide sufficient incentive for a State to stringently restrict movement of tuberculosis-susceptible animals from high-risk areas within the State and to otherwise rapidly contain the disease and move toward eradication. Failure to rapidly identify and address high-risk areas has significantly increased the risk of tuberculosis spread among livestock.

In this interim rule, we establish requirements for achieving APHIS recognition of zones within a State for the purpose of tuberculosis status. Providing for zones will allow APHIS to recognize areas of distinct tuberculosis risk levels within a State. This will encourage States to rapidly isolate affected areas from the rest of the State and to implement effective containment and eradication measures, thereby decreasing tuberculosis risk in the State.

The regulations until now defined a modified accredited State as one that complies with all of the provisions of the UMR regarding modified accredited States. Under the regulations prior to this interim rule, it was not always clear what standards a State needed to meet to achieve modified accredited status. With the establishment of zones under this interim rule, it is essential to the prevention of tuberculosis spread in States that this lack of clarity be rectified so that States are clear regarding the standards for achieving status and, consequently, regarding the restrictions they must impose on the movement of livestock from zones that do not qualify for modified accredited or accredited-free status.

As set forth in this interim rule, if cattle or bison to be moved interstate from a nonmodified accredited State or zone are breeding animals that are not from an accredited herd, they will need to be accompanied by a certificate stating that they have been classified negative to two official tuberculin tests. Based on our experience enforcing the regulations, we have determined that requiring less than two negative tests before such potentially high-risk animals may be moved interstate creates an unacceptable risk that the animals will transmit tuberculosis to other livestock, due to the possibility that an animal that tests negative to one test could be incubating the tuberculosis disease agent at the time of that first test.

Under this interim rule, if the cattle or bison to be moved from a nonmodified accredited State or zone are steers or spayed heifers or are officially identified sexually intact heifers moved to an approved feedlot, they must be accompanied by a certificate stating they have been classified negative to an official tuberculin test that was conducted within 30 days prior to the date of movement. Because of the high or unknown risk of the presence of tuberculosis in a nonmodified accredited State or zone, we consider it necessary that such animals test negative to an official tuberculin test before they are moved interstate so that if they are found to be infected with the disease, they can be traced back to the source herd. Inclusion of this requirement in the interstate regulations will ensure that States seeking recognition of zones impose like requirements on intrastate movement of livestock and thus more rapidly control any outbreaks of tuberculosis within the State.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action 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. This 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.

Statutory authorities including 21 U.S.C. 111, 114, 114a, and 120 authorize the Secretary of Agriculture to conduct programs and promulgate regulations to prevent the dissemination of any contagious, infectious, or communicable disease of animals from one State to another.

In this interim rule, we are allowing for APHIS recognition of zones within a State that have different risk statuses for tuberculosis, are clarifying the conditions for assigning a particular risk status, and are increasing the amount of testing that must be done before certain cattle and bison may be moved interstate.

In considering this rulemaking, we considered three options. The first was to retain the regulations already in place and make no changes. We did not consider this an acceptable option because it would have had the effect of increasing the risk of the interstate transmission of tuberculosis, while at the same time retaining unnecessarily stringent disease status designations for parts of some States. A second option would have been to expand the number of possible tuberculosis status levels for States and zones to more precisely reflect the potential gradations of eradication efforts and disease risk among different areas. We believe this option is one that should be pursued, and we are in the process of developing rulemaking that would propose such changes to the regulations. However, because we believe such substantive changes to the tuberculosis eradication program should be presented to the public for comment before being implemented, we did not include such extensive changes in this interim rule. The option we chose was to implement the provisions of this interim rule that establish criteria for our recognition of two zones within a State for tuberculosis status and to address immediately those provisions of the regulations that, because of lack of clarity or insufficient safeguards, unacceptably increased the risk of the spread of tuberculosis among livestock in this country.

Below is an analysis of the potential effects of this rule on small entities as required by the Regulatory Flexibility Act. We do not have enough data for a comprehensive analysis of the economic effects of this rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this rule. We are inviting comments about this rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this rule and the economic effects of those benefits or costs.

Economic Analysis

In 1998, the total number of cattle and bison in the United States was approximately 99.5 million, valued at approximately $58.6 billion. There were 1,115,650 U.S. operations with cattle and bison. Over 99 percent of these operations had gross cash value of less than $500,000. These holdings vary in size and degree of commercialization, with many producers relying on other sources of income.

The cattle industry plays a very significant role in international trade. In 1998, the total earnings from exports of live cattle, beef, and veal was approximately $2.6 billion. The competitiveness of the United States in international markets depends to a great degree upon its reputation for producing high quality animals, a reputation that would be enhanced if bovine tuberculosis were permanently eradicated. The actual product, as well as the purchasers' perception of the quality of the product, contribute to continued world market acceptance. Thus, efforts to maintain an effective tuberculosis program, to clarify the regulations, and to secure the health of the cattle industry will continue to serve the best economic interests of the Nation.

Under the regulations, each State is designated as having one of the following tuberculosis statuses: Accredited-free, accredited-free (suspended), modified accredited, and nonmodified accredited. Prior to this rule, there were 48 accredited-free States (including Puerto Rico and the

Virgin Islands of the United States), 2 States that were modified accredited States, and one State that was accredited-free (suspended). There were no nonmodified accredited States.

We are changing the testing requirements for moving breeding animals interstate from a nonmodified accredited State or zone. Under this interim rule, breeding animals from a nonmodified accredited State or zone require a certificate stating that the animals tested negative twice to an official tuberculin test. This represents one more test than has been required and, therefore, will result in additional cost for owners moving breeding animals from a nonmodified accredited State or zone. The average cost of the test is about $380 per herd. The per animal cost varies depending on the size of the herd. For an average-sized herd of 90 animals, the average cost per animal would be approximately $4.22. The total cost for testing will depend on the number of animals that are being moved interstate.

Prior to this interim rule, there were no States or zones designated as nonmodified accredited. In this interim rule, we are listing a small portion of Michigan as being a nonmodified accredited zone. This zone includes approximately 100 herds of cattle and bison. Breeding animals from this zone will have to test negative twice to an official tuberculin test prior to interstate movement. However, we do not anticipate this testing will impose a significant burden on entities in that zone because very few animals are moved from that area of Michigan.

The provisions of this interim rule establishing mechanisms for defining "zones" within a State with regard to tuberculosis will benefit the United States at minimal or no cost because they will allow quicker response to tuberculosis outbreaks and will establish a way to manage the disease in regional zones, rather than penalize entire States. It is expected that enhanced international trade will result from establishing a regionalized approach to tuberculosis in the United States.

Prior to this interim rule, the accredited-free (suspended) State was Michigan. As of result of this rule, Michigan will assume a split status, with a small section of Michigan being assigned nonmodified accredited status, and the remainder of Michigan being assigned accredited-free status. We expect that the assignment of accredited-free status to most of the area of Michigan will have a positive economic effect on the State. Many States impose movement restrictions on livestock from States that are not accredited-free. Under this rule, of 15,000 cattle herds in Michigan, only 100 herds will be located in a nonmodified accredited zone. All other herds will be located in an accredited-free zone.

The changes to the regulations in this interim rule will result in new information collection or recordkeeping requirements, as described below under the heading "Paperwork Reduction Act."

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have received emergency approval from the Office of Management and Budget (OMB). OMB has assigned control number 0579–0146 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Docket No. 99–008–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. Please state that your comments refer to Docket No. 99–008–1 and send your comments within 60 days of publication of this rule.

This interim rule amends the bovine tuberculosis regulations to allow zones within a State to be assigned different risk statuses and to clarify the conditions for assigning a particular risk status for bovine tuberculosis. Additionally, it amends the regulations to increase the amount of testing that must be done before certain cattle and bison may be moved interstate.

In order to apply for APHIS designation of zones within a State, a State animal health official submits a request to the APHIS Administrator demonstrating that the State complies with the criteria for recognition of a zone. Additionally, the State must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request. To retain recognition of zones, the State must retain for 2 years a certificate that documents the movement of cattle, bison, and captive cervids into and out of the zones.

In accordance with this interim rule, if tuberculosis is diagnosed within an accredited-free State or zone or a modified accredited State or zone and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must adopt a tuberculosis management plan, approved jointly by the State animal health official and the APHIS Administrator.

We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .575 hours per response.

Respondents: State animal health authorities, including State veterinarians and designated State tuberculosis epidemiologists.

Estimated annual number of respondents: 56.

Estimated annual number of responses per respondent: 3.785.

Estimated annual number of responses: 212.

Estimated total annual burden on respondents: 122 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Incorporation by reference, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 77.1 is amended as follows:

a. The following definitions are revised to read as set forth below: *Accredited herd, Negative cattle and bison, Official tuberculin test, Reactor cattle and bison, Suspect cattle and bison,* and *Uniform Methods and Rules—Bovine Tuberculosis Eradication.*

b. The following definitions are removed: *Accredited-free state, Accredited-free (suspended) State, Modified accredited State,* and *Nonmodified accredited state.*

c. The following definitions are added in alphabetical order to read as set forth below: *Accredited-free State or zone, Accredited-free (suspended) State or zone, Approved feedlot, Designated tuberculosis epidemiologist, Modified accredited State or zone, Nonmodified accredited State or Zone, Official eartag, Officially identified, State animal health official, Zero percent prevalence,* and *Zone.*

§ 77.1 Definitions.

* * * * *

Accredited-free State or zone. A State or zone that has zero percent prevalence of affected cattle and bison herds, that has had no findings of tuberculosis in any cattle or bison in the State or zone for the previous 5 years, and that complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," except that the requirement of freedom from tuberculosis is 2 years from the depopulation of the last infected herd in States or zones that were previously accredited-free and in which all herds affected with tuberculosis were depopulated.

Accredited-free (suspended) State or zone. A State or zone with the status of an accredited-free State is designated as accredited-free (suspended) if tuberculosis is detected in any cattle or bison in the State or zone.

Accredited herd. To establish or maintain accredited herd status, the herd owner must comply with all of the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited herds. All cattle and bison in a herd must be free from tuberculosis.

* * * * *

Approved feedlot. A confined area approved jointly by the State animal health official and the Administrator for feeding cattle and bison for slaughter, with no provisions for pasturing or grazing.

* * * * *

Designated tuberculosis epidemiologist. A State or Federal epidemiologist designated by the Administrator to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and the management of tuberculosis affected herds.

* * * * *

Modified accredited State or zone. A State or zone that complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for the most recent 2 years, except that the Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

* * * * *

Negative cattle and bison. Cattle and bison that are classified negative for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," based on the results of an official tuberculin test.

Nonmodified accredited State or zone. A State or zone that has not received accredited-free State or zone status or modified accredited State or zone status.

Official eartag. An eartag approved by the Administrator as providing unique identification for each individual animal by conforming to the alpha-numeric National Uniform Eartagging System.

* * * * *

Official tuberculin test. Any test for tuberculosis conducted on cattle or bison in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

Officially identified. Identified by means of official eartag, individual tattoo, or individual hot brand.

* * * * *

Reactor cattle and bison. Cattle and bison that are classified as reactors for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

* * * * *

State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

* * * * *

Suspect cattle and bison. Cattle and bison that are classified as suspects for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

* * * * *

Uniform Methods and Rules—Bovine Tuberculosis Eradication. Uniform methods and rules for eradicating bovine tuberculosis in the United States approved by APHIS on January 22, 1999. The Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999, edition was approved for incorporation by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.[1]

Zero percent prevalence. No finding of tuberculosis in any cattle or bison herd in a State or zone.

Zone. A defined geographic land area identifiable by geological, political, manmade, or surveyed boundaries, with mechanisms of disease spread, epidemiological characteristics, and the ability to control the movement of animals across the boundaries of the zone taken into account.

3. Section 77.2 is revised to read as follows:

§ 77.2 Bovine tuberculosis status of States and zones.

The Administrator shall designate each State in accordance with this subpart according to its tuberculosis status. A defined zone comprised of a portion of an entire State will be given

[1] Copies may be obtained from the National Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, Maryland 20737–1231. You may inspect a copy at the APHIS reading room, room 1141, USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

a particular status designation upon request of the State only if the Administrator determines that:

(a) The State meets the requirements of this subpart for establishment of disease status zones;

(b) The State has adopted and is enforcing regulations that impose restrictions on the intrastate movement of cattle and bison that are substantially the same as those in place under this subpart for the interstate movement of cattle and bison, and has adopted and is enforcing regulations that impose restrictions on the intrastate movement of captive cervids that are substantially the same as those in place under subpart B of this part for the interstate movement of captive cervids; and

(c) The designation of part of a State as a zone will otherwise be adequate to prevent the interstate spread of tuberculosis.

4. Section 77.3 is revised to read as follows:

§ 77.3 Accredited-free States or zones.

(a) The following are accredited-free States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, the Virgin Islands of the United States, Washington, West Virginia, Wisconsin, and Wyoming.

(b) The following are accredited-free zones: A zone in Michigan consisting of that part of the State outside the zone in Michigan described in § 77.5(b).

(c) Detection of tuberculosis in any one herd of cattle or bison in an accredited-free State or zone will result in suspension of accredited-free State or zone status. If two or more accredited herds are detected in an accredited-free State or zone within a 48-month period, the State or zone will be removed from the list of accredited-free States or zones and will be reclassified as either a modified accredited State or zone or a nonmodified accredited State or zone.

(d) If the accredited-free status of a State or zone has been suspended, the State or zone may qualify for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed. If any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" January 22, 1999, edition, which was approved for incorporation by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51,[2] for such newly assembled herds to those other livestock in the same manner as to cattle and bison. Failure to do so will result in reclassification of the State or zone as either a modified accredited State or zone or a nonmodified accredited State or zone.

(e) If tuberculosis is diagnosed within an accredited-free State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must adopt a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock and wildlife, the prevention of the spread of the disease to other wildlife and livestock, increased surveillance of tuberculosis in wildlife, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not adopt such a plan within the required 6 months, the State or zone will lose its accredited-free status and will be reclassified as either a modified accredited State or zone or a nonmodified accredited State or zone.

(f) Accredited-free State or zone status must be renewed annually. To qualify for renewal of accredited-free State or zone status, a State must submit an annual report to APHIS certifying that the State or zone within the State complies with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free States. The report must be submitted to APHIS each year between October 1 and November 30.

5. Section 77.4 is revised to read as follows:

§ 77.4 Modified accredited States or zones.

(a) The following are modified accredited States: New Mexico and Texas.

(b) The following are modified accredited zones: None.

(c) If tuberculosis is diagnosed within a modified accredited State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must adopt a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock and wildlife, the prevention of the spread of the disease to other wildlife and livestock, increased surveillance of tuberculosis in wildlife, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not adopt such a plan within the required 6 months, the State or zone will be reclassified as nonmodified accredited.

(d) If any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999 edition," which was approved for incorporation by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51,[3] for such newly assembled herds to those other livestock in the same manner as to cattle and bison. Failure to do so will result in the removal of the State or zone from the list of modified accredited States or zones and its being reclassified as a nonmodified accredited State or zone.

(e) Modified accredited State or zone status must be renewed annually. To qualify for renewal of a modified

[2] Copies may be obtained from the National Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, Maryland 20737–1231. You may inspect a copy at the APHIS reading room, room 1141, USDA South Building, 14th Street and Independence Ave., SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[3] Copies may be obtained from the National Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, Maryland 20737–1231. You may inspect a copy at the APHIS reading room, room 1141, USDA South Building, 14th Street and Independence Ave., SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

accredited State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding modified accredited States. The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for accredited-free status, a modified accredited State or zone must demonstrate to the Administrator that it has zero percent prevalence of affected cattle and bison herds, has had no findings of tuberculosis in any cattle or bison in the State or zone for the previous 5 years, and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," except that the requirement of freedom from tuberculosis is 2 years from the depopulation of the last infected herd in States or zones that were previously accredited-free and in which all herds affected with tuberculosis were depopulated.

§§ 77.10 and 77.14 [Amended]

6. Section 77.10 is amended by redesignating footnote 3 as footnote 5, and § 77.14 is amended by redesignating footnote 4 as footnote 6.

§§ 77.5–77.18 [Redesignated §§ 77.9–77.22]

7. Sections 77.5, 77.6, 77.7, 77.8, 77.9, 77.10, 77.11, 77.12, 77.13, 77.14, 77.15, 77.16, 77.17, and 77.18 are redesignated as §§ 77.9, 77.10, 77.11, 77.12, 77.13, 77.14, 77.15, 77.16, 77.17, 77.18, 77.19, 77.20, 77.21, and 77.22, respectively, and new §§ 77.5, 77.6, 77.7, and 77.8 are added to read as follows:

§ 77.5 Nonmodified accredited States or zones.

(a) The following are nonmodified accredited States: None.

(b) The following are nonmodified accredited zones: A zone in Michigan delineated by starting at the juncture of State Route 55 and Interstate 75, then heading northwest and north along Interstate 75 to the Straits of Mackinac, then southeast and south along the shoreline of Michigan to the eastern terminus of State Route 55, then west along State Route 55 to Interstate 75.

(c) To qualify for accredited-free status, a nonmodified accredited State or zone must demonstrate to the Administrator that it has zero percent prevalence of affected cattle and bison herds, has had no findings of tuberculosis in any cattle or bison in the State or zone for the previous 5 years, and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999 edition," which was incorporated by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51,[4] except that the requirement of freedom from tuberculosis is 2 years from the depopulation of the last infected herd in States or zones that were previously accredited-free and in which all herds affected with tuberculosis were depopulated.

(d) To qualify for modified accredited status, a nonmodified accredited State or zone must demonstrate that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," and that tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for the most recent 2 years, except that the Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

§ 77.6 Interstate movement from accredited-free, accredited-free (suspended), and modified accredited States and zones.

Cattle and bison that originate in an accredited-free State or zone, an accredited-free (suspended) State or zone, or a modified accredited State or zone and that are not known to be infected with or exposed to tuberculosis may be moved interstate without restriction.

§ 77.7 Interstate movement from nonmodified accredited States and zones.

Cattle or bison that originate in a nonmodified accredited State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under the following conditions:

(a) The cattle or bison are moved interstate directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State-inspected slaughtering establishment that has inspection by a State inspector at the time of slaughter;

(b) If the cattle or bison are steers or spayed heifers, or are officially identified sexually intact heifers moved to an approved feedlot, they must be accompanied by a certificate stating that they have been classified negative to an official tuberculin test that was conducted within 30 days prior to the date of movement. All cattle and bison so moved that are not individually identified by a registration name and number must be individually identified by an APHIS-approved metal eartag or tattoo;

(c) Cattle and bison that are breeding animals from an accredited herd may be moved interstate if they are accompanied by a certificate showing the cattle or bison are from such a herd; or

(d) If the cattle or bison are breeding animals that are not from an accredited herd, they must be accompanied by a certificate stating that they have been classified negative to two official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 30 days prior to the date of movement. All cattle and bison so moved that are not individually identified by a registration name and number must be individually officially identified.

§ 77.8 Application for and retention of recognition of tuberculosis status zones.

(a) A State animal health official may request at any time that the Administrator designate part of a State as having a different tuberculosis status under this subpart than the rest of the State, except that each State may be divided into no more than two different zones. The requested zone must be delineated by the State animal health authorities, subject to approval by the Administrator. The request from the State must demonstrate that the State complies with the following requirements:

(1) The State must have the legal and financial resources to implement and enforce a tuberculosis eradication program and must have in place an infrastructure, laws, and regulations that require and ensure that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife;

(2) The State in which the intended zones are located must maintain, in each intended zone, clinical and epidemiological surveillance of animal species at risk of tuberculosis, at a rate that allows detection of tuberculosis in

[4] Copies may be obtained from the National Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, Maryland 20737–1231. You may inspect a copy at the APHIS reading room, room 1141, USDA South Building, 14th Street and Independence Ave., SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence. The designated tuberculosis epidemiologist must review reports of all testing for each zone within the State within 30 days of the testing; and

(3) The State must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request.

(b) Retention of APHIS recognition of a tuberculosis status zone is subject to annual review by the Administrator. To retain recognition of a zone, a State must continue to comply with the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this section, and must retain for 2 years all certificates required under this part for the movement of cattle, bison, and captive cervids.

§ 77.12 [Amended]

8. Newly redesignated § 77.12 is amended as follows:

a. In the definition of Accredited herd, by removing the reference to "§ 77.10(f)" and adding in its place a reference to "§ 77.14(f)", and by removing the reference to "§ 77.12" and adding in its place a reference to "§ 77.16".

b. In the definition of *Affected herd,* by removing the reference to "§ 77.16(d)" and adding in its place a reference to "§ 77.20(d)".

c. In the definition of *Monitored herd,* by removing the reference to "§ 77.14" and adding in its place a reference to "§ 77.18".

d. In the definition of *Qualified herd,* by removing the reference to "§ 77.10(f)" and adding in its place a reference to "§ 77.14(f)".

§ 77.13 [Amended]

9. Newly redesignated § 77.13 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 77.12" and adding in its place a reference to "§ 77.16".

b. In paragraph (b), by removing the reference to "§ 77.17" and adding in its place a reference to "§ 77.21".

c. In paragraph (c), by removing the reference to "§ 77.17" and adding in its place a reference to "§ 77.21".

§ 77.14 [Amended]

10. Newly redesignated § 77.14 is amended as follows:

a. In paragraph (a)(1), by removing the reference to "§ 77.11(a)(2)" and adding in its place a reference to "§ 77.15(a)(2)", and by removing the reference to "§ 77.16(e)" and adding in its place a reference to "§ 77.20(e)".

b. In paragraph (e)(1), by removing the reference to "§ 77.11(a)" and adding in its place a reference to "§ 77.15(a)"

c. In paragraph (e)(2), by removing the reference to "§ 77.11(b)" and adding in its place a reference to "§ 77.15(b)".

d. In paragraph (e)(3), by removing the reference to "§ 77.11(c)" and adding in its place a reference to "§ 77.15(c)".

e. In paragraph (f), by removing the reference to "§ 77.12(a)(1)" and adding in its place a reference to "§ 77.16(a)(1)", and by removing the reference to "§ 77.13(a)(1)" and adding in its place a reference to "§ 77.17(a)(1)".

§ 77.15 [Amended]

11. In newly redesignated § 77.15, paragraph (c)(2) is amended by removing the reference to "§ 77.16(e)" and replacing it with a reference to "§ 77.20(e)".

§ 77.16 [Amended]

12. In newly redesignated § 77.16, paragraph (a)(1) is amended by removing the reference to "§ 77.10(f)" and adding in its place a reference to "§ 77.14(f)", and paragraph (b) is amended by removing the reference to "§ 77.9(c)" and adding in its place a reference to "§ 77.13(c)".

§ 77.17 [Amended]

13. In newly redesignated § 77.17, paragraph (a)(1) is amended by removing the reference to "§ 77.10(f)" and adding in its place a reference to "§ 77.14(f)", and paragraph (b)(2) is amended by removing the reference to "§ 77.9(c)" and adding in its place a reference to "§ 77.13(c)".

§ 77.18 [Amended]

14. In newly redesignated § 77.18, paragraph (b)(2) is amended by removing the reference to "§ 77.9(c)" and adding in its place a reference to "§ 77.13(c)".

§ 77.20 [Amended]

15. Newly redesignated § 77.20 is amended as follows:

a. In paragraph (a)(2), by removing the reference to "§ 77.16(b)" and adding in its place a reference to "§ 77.20(b)".

b. In the introductory text to paragraph (b), by removing the reference to "§ 77.16(e)" and adding in its place a reference to "§ 77.20(e)".

c. In paragraph (b)(2), by removing the reference to "§ 77.17" and adding in its place a reference to "§ 77.21".

d. In paragraph (b)(2)(i), by removing the reference to "§ 77.16(c)" and adding in its place a reference to "§ 77.20(c)".

e. In paragraph (b)(2)(ii), by removing the reference to "§ 77.16(d)" and adding in its place a reference to "§ 77.20(d)".

f. In paragraph (c), by removing the reference to "§ 77.16(a)" and adding in its place a reference to "§ 77.20(a)".

g. In paragraph (d), by removing the reference to "§ 77.15" and adding in its place a reference to "§ 77.19".

h. In paragraph (e), by removing the reference to "§ 77.16(d)" and adding in its place a reference to "§ 77.20(d)".

i. In paragraph (e)(1), by removing the reference to "§ 77.16(d)" and adding in its place a reference to "§ 77.20(d)".

j. In paragraph (g)(2), by removing the reference to "§ 77.16(a)" and adding in its place a reference to "§ 77.20(a)".

§ 77.21 [Amended]

16. In newly redesignated § 77.21, paragraph (a)(3) is amended by removing the reference to "§ 77.8" and adding in its place a reference to "§ 77.12".

Done in Washington, DC, this 20th day of October 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–27746 Filed 10–29–99; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–1048]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: The Board of Governors of the Federal Reserve System has issued an interpretation concerning the scope of the data processing provision of Regulation K. The interpretation clarifies that a banking organization may not engage in a broader range of data processing activities outside the United States under Regulation K than is permissible under Regulation Y, without the Board's approval.

EFFECTIVE DATE: November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452–3786), or Jonathan D. Stoloff, Counsel (202/452–3269), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Regulation K provides that a bank holding company or Edge corporation may control a foreign company that engages in

activities usually in connection with the transaction of banking or other financial operations abroad. 12 CFR 211. Section 211.5(d)(10) of Regulation K states:

"*Permissible activities.* The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad: Data processing".

Section 211.5(d)(10) of Regulation K was adopted in 1979. 12 CFR 211 (1980). It was intended to incorporate into the regulation earlier decisions that had allowed an Edge corporation to engage in somewhat broader data processing activities abroad than were permitted domestically, although the activity was intended to consist predominately of processing financial information. At that time, Regulation Y significantly restricted the ability of a bank holding company to engage in data processing activities in the United States. Since 1979, the provision of Regulation Y that encompasses data processing has been amended several times and in some respects can be considered a broader grant of authority than under Regulation K (for example, with respect to the manufacture of hardware, the provision of software, and related activities). Regulation Y also now specifically authorizes a company to derive up to 30 percent of its revenues from processing non-financial data. 12 CFR 225.28(b)(14).

The Board has never specifically considered the scope of activities permitted by section 211.5(d)(10) of Regulation K. A recent prior notice received under Regulation K raised the issue of the scope of this provision. A bank holding company proposed to acquire a foreign data processing company that engaged in a small amount of data processing and related activities that did not otherwise qualify under the standards set out in Regulation Y. The bank holding company assumed there were no restrictions on its ability to engage in any type of data processing or related activities under Regulation K.

Given the potential for misinterpretation of the data processing provision of Regulation K, the Board believes it would be appropriate to clarify the situation and issue this interpretation.

Prior to the issuance of Regulation K in 1979, the Board approved applications to engage in data processing activities abroad. At the time, Regulation Y authorized only "(i) providing bookkeeping or data processing services for the internal operations of the holding company and its subsidiaries and (ii) storing and processing other banking, financial, or related economic data, such as performing payroll, accounts receivable or payable, or billing services." [1]

Initially, the Board authorized data processing services abroad subject to the same limitations in Regulation Y. Subsequently, the Board authorized a limited expansion of data processing services abroad beyond that permissible under Regulation Y. The Board approved this expansion with the expectation that, as indicated in the application materials, data processing activities overseas would primarily be financial in nature.

The Board subsequently codified the data processing authority under Regulation K in 1979. This authority was based upon the conditions the Board had customarily imposed on such activities. Accordingly, the scope of data processing under Regulation K continued to be somewhat broader than that permitted under Regulation Y.

As noted above, during this period Regulation Y did not permit *any* nonfinancial data processing for non-affiliates, other than as an incidental activity on a very limited basis. In the revisions to Regulation Y in the 1980s and 1990s, however, the Board substantially expanded the scope of domestic data processing and related activities, which now include data transmission services, manufacture of certain hardware, provision of software, and the ability to derive up to 30 percent of their data processing revenues from nonfinancial data processing activities. Regulation K does not specifically describe these activities. The Board wishes to clarify that such activities are authorized under Regulation K and that the scope of the data processing activity permissible under Regulation K is coextensive with those activities permitted under section 225.28(b)(14) of Regulation Y, as amended. If a banking organization wishes to engage outside the United States in data processing or related activities beyond those permitted in Regulation Y, it should apply to the Board under Regulation K.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation K, 12 CFR part 211 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*

2. Part 211 is amended by adding a new § 211.604 to read as follows:

§ 211.604. Data processing activities.

(a) *Introduction.* As a result of a recent proposal by a bank holding company to engage in data processing activities abroad, the Board has considered the scope of permissible data processing activities under Regulation K (12 CFR part 211). This question has arisen as a result of the fact that § 211.5(d)(10) of Regulation K does not specifically indicate the scope of data processing as a permissible activity abroad.

(b) *Scope of data processing activities.* (1) Prior to 1979, the Board authorized specific banking organizations to engage in data processing activities abroad with the expectation that such activity would be primarily related to financial activities. When Regulation K was issued in 1979, data processing was included as a permissible activity abroad. Although the regulation did not provide specific guidance on the scope of this authority, the Board has considered such authority to be coextensive with the authority granted in specific cases prior to the issuance of Regulation K, which relied on the fact that most of the activity would relate to financial data. Regulation K does not address related activities such as the manufacture of hardware or the provision of software or related or incidental services.

(2) In 1979, when the activity was included in Regulation K for the first time, the data processing authority in Regulation K was somewhat broader than that permissible in the United States under Regulation Y (12 CFR part 225) at that time, as the Regulation K authority permitted limited non-financial data processing. In 1979, Regulation Y authorized only financial data processing activities for third parties, with very limited exceptions. By 1997, however, the scope of data processing activities under Regulation Y was expanded such that bank holding

[1] 12 CFR 222.4(a)(8) (1971). At the time, the Board also authorized limited incidental activities pursuant to section 222.123 of Regulation Y; however, the Board noted that the authority to engage in data processing was "not intended to permit holding companies to engage in automated data processing activities by developing programs either upon their own initiative or upon request, unless the data involved are financially oriented." 12 CFR 222.123 (1971).

companies are permitted to derive up to 30 percent of their data processing revenues from processing data that is not financial, banking, or economic. Moreover, in other respects, the Regulation Y provision is broader than the data processing provision in Regulation K.

(3) In light of the fact that the permissible scope of data processing activities under Regulation Y is now equal to, and in some respects, broader than the activity originally authorized under Regulation K, the Board believes that § 211.5(d)(10) should be read to encompass all of the activities permissible under § 225.28(b)(14) of Regulation Y. In addition, the limitations of that section would also apply to § 211.5(d)(10).

(c) *Applications.* If a U.S. banking organization wishes to engage abroad in data processing or data transmission activities beyond those described in Regulation Y, it must apply for the Board's prior consent under § 211.5(d)(20) of Regulation K. In addition, if any investor has commenced activities beyond those permitted under § 225.28(b)(14) of Regulation Y in reliance on Regulation K, it should consult with staff of the Board to determine whether such activities have been properly authorized under Regulation K.

By order of the Board of Governors, October 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28380 Filed 10–29–99; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8827]

Removal of Regulations Providing Guidance Under Subpart F, Relating to Partnerships and Branches; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction of temporary and final regulations.

SUMMARY: This document contains corrections to the temporary and final regulations (TD 8827), which were published in the **Federal Register** on Tuesday, July 13, 1999, (64 FR 37677). The regulations relate to the treatment under subpart F of certain payments involving branches of a controlled foreign corporation that are treated as separate entities for foreign tax purposes or partnerships in which CFC's are partners.

DATES: These corrections are effective July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Valerie Mark, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary and final regulations that are the subject of these corrections are under sections 904, 954, and 7701.

Need for Correction

As published, the temporary and final regulations (TD 8827) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary and final regulations (TD 8827), which are the subject of FR Doc. 99–17369, is corrected as follows:

§ 1.904–5 [Corrected]

1. On page 37677, column 3, amendatory instructions "**Par. 2.**", last line, the language "amended by removing the last sentence" is corrected to read "amended by removing the last two sentences".

2. On page 37678, column 1, amendatory instruction "**Par. 7.**", the language "**Par. 7.**" is corrected to read "**Par. 6.**".

3. On page 37678, column 1, amendatory instruction "**Par. 9.**", the language "**Par. 9.**" is corrected to read "**Par. 7.**".

4. On page 37678, column 1, amendatory instruction "**Par. 10.**", the language "**Par. 10.**" is corrected to read "**Par. 8.**".

§ 301.7701–3 [Corrected]

5. On page 37678, column 1, the amendatory instruction for "**Par. 11.**" is corrected to read as follows:

Par. 9. In § 301.7701–3, the last two sentences in paragraph (f)(1) are removed.

6. On page 37678, column 1, amendatory instruction "**Par. 12.**", the language "**Par. 12.**" is corrected to read "**Par. 10.**".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–28037 Filed 10–29–99; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Parts 0 and 27

[A.G. Order No. 2264–99]

RIN 1105–AA60

Whistleblower Protection For Federal Bureau of Investigation Employees

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (Department) adopts as final, with certain changes discussed below, the interim rule published last year in the **Federal Register** establishing procedures under which employees of the Federal Bureau of Investigation (FBI) may make disclosures of information protected by the Civil Service Reform Act of 1978 and the Whistleblower Protection Act of 1989. The interim rule also established procedures under which the Department will investigate allegations by FBI employees of reprisal for making such protected disclosures, and under which it will take appropriate corrective action.

DATES: This rule is effective November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Stuart Frisch, General Counsel, or John Caterini, Attorney-Advisor, Office of the General Counsel, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530; telephone: (202) 514–3452; e-mail: John.Caterini@usdoj.gov.

SUPPLEMENTARY INFORMATION:

A. Background

On November 10, 1998, the Department issued an interim rule establishing procedures under which FBI employees may make disclosures of information protected by the Civil Service Reform Act of 1978, Pub. L. 95–454, and the Whistleblower Protection Act of 1989, Pub. L. 101–12, codified at 5 U.S.C. 2303. The interim rule also established procedures under which the Department will investigate allegations by FBI employees of reprisal for making such protected disclosures and under which it will take appropriate corrective action.

Under sections 1214 and 1221 of title 5 of the United States Code, most federal employees who believe they have been subjected to a prohibited personnel practice, including reprisal for whistleblowing, may request an investigation by the Office of Special Counsel (OSC) (section 1214) or, in appropriate circumstances, pursue an individual right of action before the

Merit Systems Protection Board (MSPB) (sections 1214(a)(3) and 1221). Although Congress expressly excluded the FBI from the scheme established by those provisions, see 5 U.S.C. 2302(a)(2)(C)(ii), section 2303(a) of title 5 contains a separate provision that prohibits reprisals against whistleblowers in the FBI. Section 2303(b) directs the Attorney General to prescribe regulations to ensure that such reprisal not be taken, and section 2303(c) directs the President to provide for the enforcement of section 2303 "in a manner consistent with applicable provisions of section 1214 and 1221." On April 14, 1997, the President delegated to the Attorney General the "functions concerning employees of the Federal Bureau of Investigation vested in (him) by * * * section 2303(c) of title 5, United States Code," and directed the Attorney General to establish "appropriate processes within the Department of Justice to carry out these functions." See 62 FR 23123 (1997).

The interim rule implements section 2303(b) and (c) and the President's April 1997 directive, superseding and replacing 28 CFR 0.39c, which gave the Counsel for the Department's Office of Professional Responsibility authority to request a stay of a personnel action against an FBI employee when he determined that there were reasonable grounds to believe that the action was taken as a reprisal for whistleblowing. The interim rule designates specific offices—the Department's Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), and the FBI's Office of Professional Responsibility (FBI OPR) (collectively, Receiving Offices)—to which an FBI employee (or applicant for employment with the FBI) may disclose information that the employee or applicant reasonably believes evidences violation of any law, rule or regulation; mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. (Such disclosures are referred to herein as "whistleblower disclosures.") In accordance with section 2303(a), the interim rule prohibits reprisals against persons who make such disclosures.

The interim rule further provides that OPR or OIG (the Conducting Office) will investigate whistleblower reprisal claims and may recommend corrective action, where appropriate, to the Director, Office of Attorney Personnel Management (the Director). Under the interim rule, the Director may decide whistleblower reprisal claims presented to her by OPR or OIG (or, in appropriate circumstances, by a complainant directly). The Director may also, among other things, authorize a temporary stay, rule on evidentiary matters, and hold a hearing. Under the interim rule, the roles and functions of the Conducting Office and the Director are thus analogous to those of the OSC and MSPB, respectively, in whistleblower cases involving federal employees generally. In addition, the interim rule imports time frames specified in the statute for the OSC/MSPB system whenever possible.

One fundamental difference, however, between the two systems is that the procedures provided in the interim rule are entirely internal to the Department. This is because section 2303 (the source of authority for the interim rule) identifies the Attorney General or her designee as recipients of protected whistleblower disclosures, rather than any outside person or entity. In addition, the President's April 1997 directive, consistent with the statute and its legislative history, directs that the Attorney General establish appropriate processes within the Department of Justice. See, *e.g.*, 124 Cong. Rec. 28770 (1978) ("We gave (the FBI) special authority * * * to let the President set up their own whistleblower (sic) system so that appeals would not be to the outside but to the Attorney General.") (statement of Representative Udall).

Although the interim rule was effective upon publication in the **Federal Register**, the Department invited post-promulgation comments. The Department received three sets of comments, which are discussed below.

B. Discussion of Comments and Changes to the Interim Rule

1. Definition of Protected Disclosure

Unlike section 2303, section 2302 (which sets forth the scheme for federal employees generally) creates two types of protected disclosures. Section 2302(b)(8)(A) protects whistleblower disclosures, regardless of whom they are made to, provided that they are not otherwise specifically prohibited by law or required by Executive Order to be kept secret. Section 2302(b)(8)(B), by contrast, protects whistleblower disclosures, without qualification or exception, only if they are made to certain specific persons or entities—the OSC, an agency Inspector General, or other designee appointed by the head of the agency. Section 2303 adopts the approach set forth in 2302(b)(8)(B), in that it protects whistleblower disclosures that are made to particular persons or entities (namely, the Attorney General or her designee).

One commenter suggested that the final rule should follow the approach set forth in section 2302(b)(8)(A), under which disclosures that do not otherwise violate law or Executive Order would be protected regardless of to whom they are made. We have not adopted this suggestion. The operative statutory provision, section 2303(a), protects whistleblowing disclosures only if they are made to the Attorney General or an employee whom she designates. Section 2303(a) thus treats FBI whistleblowing activity differently from other agency whistleblowing by channeling whistleblowers to designated agency officials.

2. Recipients of Protected Disclosures

As stated earlier, the interim rule designates three entities to receive whistleblower disclosures: OPR, OIG, and FBI OPR. All three commenters suggested expanding the list of recipients for protected disclosures. In particular, the commenters proposed the following additional recipients: The FBI Director and Deputy Director; the FBI Inspection Division; supervisors in the chain of command; co-workers; and members of Congress.

We agree that whistleblower disclosures made to the head of an employee's agency should be protected, and the final rule therefore includes the FBI Director and Deputy Director, as well as the Attorney General and Deputy Attorney General, as recipients for such disclosures. We have also decided to designate the highest-ranking official in each FBI field office as recipients of protected disclosures. The highest-ranking official in each FBI field office is generally a Special Agent in Charge (SAC). The exceptions are the FBI's field offices in Los Angeles, CA, New York, NY, and Washington, DC, where the highest-ranking official is an Assistant Director in Charge (ADIC). These senior officials—whether SACs or ADICs—are generally in a position to take action against and to correct management and other problems within their respective field offices. In addition, designating the heads of field offices as recipients of protected disclosures permits employees in the field to have an opportunity to make protected disclosures to officials with whom they may be more familiar, and without the necessity of contacting officials at FBI headquarters.

In response to suggestions that the Inspection Division, supervisors, and co-workers also be designated recipients for whistleblower disclosures, we note, as an initial matter, that section 2303(a) limits the universe of recipients of protected disclosures to the Attorney

General "or an employee designated by the Attorney General for such purpose." This statutory directive suggests that Congress contemplated that recipients for whistleblower disclosures would be a relatively restricted group. Given the size of the FBI, as well as the many demands on the Attorney General's time, we believe that it is appropriate, as well as within the Attorney General's authority, to designate more than one employee of the Department as a recipient. On the other hand, to designate a large (and in the case of supervisors, arguably ill-defined) group of employees as recipients would be inconsistent with Congress's decision, given the sensitivity of information to which FBI employees have access, not to protect *all* legal disclosures of wrongdoing, see 5 U.S.C. 2302(a)(2)(C)(ii), the way it did with employees of other agencies, see 5 U.S.C. 2302(b)(8) (discussed above).

Given these concerns, we do not believe Congress intended to include all FBI employees in the class of those to whom protected whistleblowing disclosures may be made. Moreover, there is a difference between complaining to a fellow employee about alleged misconduct, on the one hand, and affirmatively bringing an allegation of wrongdoing to the attention of one in a position to do something about it, on the other. Even supervisors in the chain of command—though a subset of all employees—comprise a sufficiently large group in the aggregate that we do not believe Congress intended to include them as recipients of protected disclosures. Designating supervisors as recipients of protected disclosures raises the additional problem of including as recipients the very individuals against whom the prohibition on reprisal is directed, *i.e.*, individuals who have authority to take, direct others to take, recommend, or approve personnel actions against whistleblowers. Designating the highest ranking official in each field office, but not all supervisors, as recipients of protected disclosures (as discussed above) provides a way to channel such disclosures to those in the field who are in a position to respond and to correct management and other problems, while also providing an on-site contact in the field for making protected disclosures. We therefore decline to adopt the suggestion that all employees and supervisors be designated recipients of protected disclosures.

The FBI Inspection Division conducts periodic inspections of FBI offices and workplaces and, as part of those inspections, conducts extensive interviews of employees at those locations. Virtually all FBI employees must therefore, as part of their duties, participate from time to time in interviews with the Inspection Division and provide requested information. Required participation in such inspections is, however, distinct from whistleblowing. The provisions that apply to other federal employees recognize this distinction by providing for separate protection for required participation in an investigation: employees are protected under section 2302(b)(8) from reprisal for whistleblowing, but are protected under section 2302(b)(9)(C) from reprisal for cooperating in an Inspector General or OSC investigation. Federal employees of applicable agencies who claim reprisal under section 2302(b)(9) for cooperating in an investigation may report their allegations to the OSC, which may investigate and pursue those allegations. *See* 5 U.S.C. 1212, 1214. Such employees, however, are not entitled to bring an individual right of action under section 1221. Likewise, it is the FBI's policy that if an employee is subject to reprisal for any disclosure made during an inspection interview, the matter is referred to FBI OPR for review and appropriate action. Thus, there is already in place within the FBI a procedure, analogous to that provided to federal employees generally, to protect FBI employees from reprisal for disclosures made during an inspection. We therefore decline to adopt the suggestion that the FBI Inspection Division be included as a recipient of protected disclosures.

One commenter suggested that the procedures set forth in the rule should apply to disclosures made to Congress, citing several statutes relating to the right of federal employees to communicate with Congress—the Lloyd-Lafollette Act of 1912, 5 U.S.C. 7211; section 625 of the Treasury, Postal Service and General Government Appropriations Act of 1998, Pub. L. 105–61; and the Intelligence Community Whistleblower Protection Act of 1998, Pub. L. 105–272. Section 2303 (the enabling statute), however, protects whistleblower disclosures only to the extent they are made to the Attorney General or to an employee designated by the Attorney General for such purposes. As stated earlier, this indicates that, for purposes of section 2303, Congress specifically intended that protected FBI disclosures be internal to the Department. We have therefore not adopted this suggestion. We note, however, that individuals remain free to report violations by a Department official of any of the above-listed statutes to OPR, OIG, or FBI OPR. These offices are authorized to investigate the alleged violation and to recommend appropriate corrective action.

The final rule has been changed to incorporate the additional designated recipients discussed above. We anticipate that the designated recipients, upon receiving a whistleblower disclosure, will take appropriate action within their discretion and authority, including, where appropriate, forwarding the disclosure to one of the Receiving Offices.

3. Protection Against Threats To Take a Personnel Action and From "Other Significant Change in Duties, Responsibilities or Working Conditions"

Section 2303(a) prohibits "tak(ing), or fail(ing) to take" a personnel action as a reprisal for a protected disclosure. By contrast, section 2302(b)(8), the statute applicable to federal employees generally, also prohibits "threaten(ing)" to take or fail to take personnel action. All three commenters urged that the rule also protect FBI employees from threats to take or fail to take personnel action. The Department accepts this suggestion and has revised § 27.2(a) accordingly.

A related comment, made by all commenters, involves the definition of "personnel action." Section 2303(a) defines "personnel action" to mean any action described in subsections (i) through (x) of section 2302(a)(2)(A). When Congress enacted section 2303, section 2302(a)(2)(A) contained only ten subsections, the last of which, (x), defined "personnel action" to include "any other significant change in duties, responsibilities, or working conditions." Later, in 1994, Congress added another personnel practice to section 2302(a)(2)(A): "a decision to order psychiatric testing or examination." This new provision was made subsection (x), and the "other significant change" provision became subsection (xi). Because Congress did not also change section 2303(a), the net effect was to substitute the psychiatric testing provision (the new subsection (x)) for the "other significant change" provision (the old subsection (x)) in the definition of "personnel action," as it applied to the FBI. All commenters suggested that the final rule make the "other significant change" provision applicable to FBI employees. We believe that the Attorney General has authority under 5 U.S.C. 301 to expand the definition of "personnel action" for purposes of these regulations. Section 301 authorizes the Attorney General to "prescribe regulations for the

government of (her) department (and) the conduct of its employees." Accordingly, the Department accepts this suggestion and has revised § 27.2(b).

4. Absence of Confidentiality Provisions Analogous to Those Found in Sections 1212(g) and 1213(h)

One commenter expressed concern that the interim rule does not contain "confidentiality provisions," such as those found in sections 1212(g) and 1213(h). Section 1212(g) prohibits OSC from disclosing information about a person who alleges a reprisal, except in accordance with the Privacy Act or as required by other applicable federal law. Section 1213(h) prohibits OSC from disclosing the identity of a person making a disclosure, unless necessary because of imminent danger to public health or safety or imminent violation of any criminal law.

As an initial matter, section 2303(c) requires the procedures set forth in the rule to be "consistent with the applicable provisions of sections 1214 and 1221." Because section 2303(c) is silent as to sections 1212 and 1213, we decline to adopt the suggestion that the rule include the confidentiality provisions of those sections. We note in passing, however, that nothing in the interim rule suggests that a Conducting Office, the Director, or anyone else may release the identity of a whistleblower, or any other information, to the public in contravention of the Privacy Act or any other federal non-disclosure statute. To the extent the comment may have been prompted in part by § 27.4(c)(1) of the interim rule, which provided for release of Conducting Office memoranda of interview in certain circumstances, we have removed that provision.

5. Proof of Reprisal

One commenter suggested that the regulations should not require proof of reprisal, noting that section 2302(b)(8) prohibits taking certain personnel actions "because of" a protected disclosure, without explicitly mentioning reprisals. Section 2302(a), however, does not contain the "because of" construction of section 2302(b)(8). Rather, it specifically prohibits taking or failing to take personnel action "as a reprisal" for a protected disclosure. In any event, the interim rule incorporates the same standard of proof for reprisal as that set forth in section 1221(e) for the OSC/MSPB scheme. We therefore believe we have adopted the appropriate standard of proof.

6. Absence of Conflict of Interest Provisions for Receiving Offices

One commenter asserted that having OPR or OIG investigate whistleblower disclosures raised the potential for conflicts of interest, because those offices also may be responsible for investigating sources of leaks, which could themselves be protected whistleblower disclosures. A protected disclosure could not be a "leak," however, because protected disclosures, by definition, are made to designated offices and officials that are internal to the Department. Moreover, to the extent one of these offices may have a conflict in investigating the substance of a whistleblower disclosure because of an ongoing leak investigation, § 27.1(b) of the rule provides that "(w)hen a Receiving Office receives a protected disclosure, it shall proceed in accordance with existing procedures establishing jurisdiction among the respective Receiving Offices." Those existing procedures include consideration of conflicts of interest.

7. Absence of Provisions for Disciplinary Proceedings

One commenter suggested that the rule should provide for disciplinary proceedings in accordance with section 1215. Section 2303 (the source of authority for the rule) requires implementation of its substantive protections "in a manner consistent with applicable provisions of sections 1214 and 1221," but is silent as to section 1215. Moreover, the Department retains its own independent authority to take appropriate disciplinary action if it determines such action to be necessary. The interim rule does not prohibit or preclude the Department from taking appropriate disciplinary action under its existing authority. We do not believe, therefore, that the rule needs to address disciplinary action.

8. Availability of a Hearing

Section 27.4(d) of the interim rule provides that "(w)here a Complainant has presented a request for corrective action directly to the Director under paragraph (c)(1) of this section, the Director may hold a hearing." One commenter noted that this language makes hearings discretionary and suggested that complainants should have a right to a hearing. We have not adopted this suggestion. Although an employee who makes a proper appeal to the MSPB has a right "to a hearing for which a transcript will be kept," this provision appears in 5 U.S.C. 7701(a)(1). Section 2303 (the source of authority for the rule) requires the rule to implement applicable provisions of only sections 1214 and 1221. Because sections 1214 and 1221 are silent on the right to a hearing, the interim rule does not require (though it permits) the Director to hold a hearing where a complainant presents a request for corrective action directly to her. Accordingly, although the interim rule gives the Director discretion to hold a hearing when a complainant presents a request for corrective action under § 27.4(d), it does not provide for a right to a hearing in that circumstance.

The interim rule does not address whether the Director has discretion to hold a hearing when a Conducting Office reports findings and recommendations to the Director pursuant to § 27.4(a). Although sections 1214 and 1221 are silent on this issue, we believe the Director should have discretion to hold a hearing in those circumstances if doing so would assist in her decisionmaking. Accordingly, the final rule has been modified to give the Director discretion to hold a hearing without regard to whether a whistleblower reprisal matter is before the Director as a result of a complainant's request (under § 27.4(c)(1)) or as a result of a Conducting Office recommendation (under § 27.4(a)). The procedures for such hearings are to be determined by the Director in the first instance (see § 27.4(e)(3)).

9. Performance of OSC and MSPB Functions by External Entities; Judicial Review

One commenter suggested that the interim rule is invalid in its entirety, because it fails to establish entities external to and independent of the Department to perform the functions of the OSC and MSPB (whose functions, under the rule, are performed by the Conducting Offices and the Director, respectively). Adopting this suggestion, however, would require the Attorney General to take an action that is beyond her authority. The President's April 1997 directive ordered the Attorney General to establish "appropriate processes within the Department of Justice," 62 FR 23123 (1997) (emphasis added). We do not believe that section 2303 requires the creation of external entities to carry out the OSC/MSPB functions. If Congress had wanted to provide FBI employees with fora outside the Department to address their whistleblower reprisal claims, it could have included them in the OSC/MSPB scheme. The fact that Congress did not do so, *see* 5 U.S.C. 2302(a)(2)(C)(ii), strongly suggests that Congress, in enacting section 2303, did not envision

the creation of external entities to perform the OSC/MSPB functions.

Two commenters requested that we provide for judicial review of decisions made under the rule, because sections 1214(c)(1) and 1221(h) provide for it. We have not accepted this suggestion. Section 2302 (the source of authority for the rule) does not provide for judicial review, and Congress has therefore not waived sovereign immunity for this purpose. Under the doctrine of separation of powers, neither the President nor the Attorney General has the authority to waive sovereign immunity; only Congress has that authority.

10. Other Changes to the Interim Rule

a. For the sake of clarity, we changed the order of paragraphs (d), (e) and (f) of § 27.4, and divided the former paragraph (f) (now paragraph (e)) into subparagraphs.

b. In § 27.1(b), to reflect current practice and policy *see* 28 CFR 0.29d(a), we added a sentence regarding the referral of whistleblowing allegations by OPR and OIG to FBI OPR.

c. In § 27.3(f), to be consistent with an applicable provision of section 1214, we added language to clarify that a complainant may agree to extend the 240-day time limit for the Conducting Office to make its determination of whether there are reasonable grounds to determine that there has been or will be a reprisal for a protected disclosure.

d. In § 27.4(a), to be consistent with an applicable provision of section 1214 (section 1214(b)(2)(E)), we added the following sentence: "A determination by the Conducting Office that there are reasonable grounds to believe a reprisal has been or will be taken shall not be cited or referred to in any proceeding under these regulations, without the Complainant's consent." We did not incorporate the provision in section 1214(b)(2)(E) relating to "any other administrative or judicial proceeding," because we lack authority to prescribe what courts and other agencies may or may not cite or reference. In addition, because the Conducting Office may continue to investigate any violation of law, rule, or regulation (see § 27.4(c)) and may report its findings to appropriate Department officials, the restriction in § 27.4(a) does not apply to such further proceedings conducted by OIG or OPR.

e. In § 27.4(b), we have added language to permit the Director, when considering comments on a Conducting Office request for an extension of a stay, to request additional information as the Director deems necessary. The interim rule did not preclude the Director from seeking additional information in those circumstances. We believe that the Director has such authority and therefore made it explicit.

f. We modified § 27.4(c)(1) to make it more consistent with applicable provisions of section 1214.

g. We revised § 27.4(e)(3) to clarify the process by which assertions of privilege are to be decided.

h. In the second sentence of § 27.5, to clarify a potential ambiguity, we have stricken "(or a designee)" after "Deputy Attorney General." The Deputy Attorney General may designate a Department official to assist or advise him in conducting a review. We do not, however, believe that the authority of the Deputy Attorney General to conduct a review should be delegated. We also clarified a possible ambiguity in the first sentence of that section concerning the time within which a complainant or the FBI may seek review of a determination or corrective action order by the Director.

C. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This rule merely establishes procedures under which FBI employees or applicants for employment with the FBI may make certain protected disclosures of information and establishes procedures under which the Department will investigate allegations of reprisal against such individuals.

D. Executive Order 12866

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

E. Executive Order 12612

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

F. Unfunded Mandates Reform Act of 1995

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

G. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 27

Government employees; Justice Department; Organization and functions (Government agencies); Whistleblowing.

For the reasons stated in the preamble, the interim rule amending 28 CFR part 0 and adding 28 CFR Part 27, which was published at 63 FR 62937, November 10, 1998, is adopted as a final rule with the following changes:

1. Revise Part 27 to read as follows:

PART 27—WHISTLEBLOWER PROTECTION FOR FEDERAL BUREAU OF INVESTIGATION EMPLOYEES

Subpart A—Protected Disclosures of Information

Sec.
27.1 Making a protected disclosure.
27.2 Prohibition against reprisal for making a protected disclosure.

Subpart B—Investigating Reprisal Allegations and Ordering Corrective Action

27.3 Investigations: The Department of Justice's Office of Professional Responsibility and Office of the Inspector General.
27.4 Corrective action and other relief: Director, Office of Attorney Personnel Management.
27.5 Review.
27.6 Extensions of time.

Authority: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519; 5 U.S.C. 2303; President's Memorandum to the Attorney General, Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978, 3 CFR p. 284 (1997).

Subpart A—Protected Disclosures of Information

§ 27.1 Making a protected disclosure.

(a) When an employee of, or applicant for employment with, the Federal Bureau of Investigation (FBI) (FBI employee) makes a disclosure of information to the Department of Justice's (Department's) Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), the FBI Office of Professional Responsibility (FBI OPR) (collectively, Receiving Offices), the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, or to the highest ranking official in any FBI field office, the disclosure will be a "protected disclosure" if the person making it reasonably believes that it evidences:

(1) A violation of any law, rule or regulation; or

(2) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) When a Receiving Office receives a protected disclosure, it shall proceed in accordance with existing procedures establishing jurisdiction among the respective Receiving Offices. OPR and OIG shall refer such allegations to FBI OPR for investigation unless the Deputy Attorney General determines that such referral shall not be made.

§ 27.2 Prohibition against reprisal for making a protected disclosure.

(a) Any employee of the FBI, or of any other component of the Department, who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action, as defined below, with respect to any FBI employee as a reprisal for a protected disclosure.

(b) Personnel action means any action described in clauses (i) through (xi) of 5 U.S.C. 2302(a)(2)(A) taken with respect to an FBI employee other than one in a position which the Attorney General has designated in advance of encumbrance as being a position of a confidential, policy-determining, policy-making, or policy-advocating character.

Subpart B—Investigating Reprisal Allegations and Ordering Corrective Action

§ 27.3 Investigations: The Department of Justice's Office of Professional Responsibility and Office of the Inspector General.

(a)(1) An FBI employee who believes that another employee of the FBI, or of any other Departmental component, has taken or has failed to take a personnel action as a reprisal for a protected disclosure (reprisal), may report the alleged reprisal to either the Department's OPR or the Department's OIG (collectively, Investigative Offices). The report of an alleged reprisal must be made in writing.

(2) For purposes of this subpart, references to the FBI include any other Departmental component in which the person or persons accused of the reprisal were employed at the time of the alleged reprisal.

(b)The Investigative Office that receives the report of an alleged reprisal shall consult with the other Investigative Office to determine which office is more suited, under the circumstances, to conduct an investigation into the allegation. The Attorney General retains final authority to designate or redesignate the Investigative Office that will conduct an investigation.

(c) Within 15 calendar days of the date the allegation of reprisal is first received by an Investigative Office, the office that will conduct the investigation (Conducting Office) shall provide written notice to the person who made the allegation (Complainant) indicating—

(1) That the allegation has been received; and

(2) The name of a person within the Conducting Office who will serve as a contact with the Complainant.

(d) The Conducting Office shall investigate any allegation of reprisal to the extent necessary to determine whether there are reasonable grounds to believe that a reprisal has been or will be taken.

(e) Within 90 calendar days of providing the notice required in paragraph (c) of this section, and at least every 60 calendar days thereafter (or at any other time if the Conducting Office deems appropriate), the Conducting Office shall notify the Complainant of the status of the investigation.

(f) The Conducting Office shall determine whether there are reasonable grounds to believe that there has been or will be a reprisal for a protected disclosure. The Conducting Office shall make this determination within 240 calendar days of receiving the allegation of reprisal unless the Complainant agrees to an extension.

(g) If the Conducting Office decides to terminate an investigation, it shall provide, no later than 10 business days before providing the written statement required by paragraph (h) of this section, a written status report to the Complainant containing the factual findings and conclusions justifying the termination of the investigation. The Complainant may submit written comments on such report to the Conducting Office. The Conducting Office shall not be required to provide a subsequent written status report after submission of such comments.

(h) If the Conducting Office terminates an investigation, it shall prepare and transmit to the Complainant a written statement notifying him/her of—

(1) The termination of the investigation;

(2) A summary of relevant facts ascertained by the Conducting Office;

(3) The reasons for termination of the investigation; and

(4) A response to any comments submitted under paragraph (g) of this section.

(i) Such written statement prepared pursuant to paragraph (h) of this section may not be admissible as evidence in any subsequent proceeding without the consent of the Complainant.

(j) Nothing in this part shall prohibit the Receiving Offices, in the absence of a reprisal allegation by an FBI employee under this part, from conducting an investigation, under their pre-existing jurisdiction, to determine whether a reprisal has been or will be taken.

§ 27.4 Corrective action and other relief: Director, Office of Attorney Personnel Management.

(a) If, in connection with any investigation, the Conducting Office determines that there are reasonable grounds to believe that a reprisal has been or will be taken, the Conducting Office shall report this conclusion, together with any findings and recommendations for corrective action, to the Director, Office of Attorney Personnel Management (the Director). If the Conducting Office's report to the Director includes a recommendation for corrective action, the Director shall provide an opportunity for comments on the report by the FBI and the Complainant. The Director, upon receipt of the Conducting Office's report, shall proceed in accordance with paragraph (e) of this section. A determination by the Conducting Office that there are reasonable grounds to believe a reprisal

has been or will be taken shall not be cited or referred to in any proceeding under these regulations, without the Complainant's consent.

(b) At any time, the Conducting Office may request the Director to order a stay of any personnel action for 45 calendar days if it determines that there are reasonable grounds to believe that a reprisal has been or is to be taken. The Director shall order such stay within three business days of receiving the request for stay, unless the Director determines that, under the facts and circumstances involved, such a stay would not be appropriate. The Director may extend the period of any stay granted under this paragraph for any period that the Director considers appropriate. The Director shall allow the FBI an opportunity to comment to the Director on any proposed extension of a stay, and may request additional information as the Director deems necessary. The Director may terminate a stay at any time, except that no such termination shall occur until the Complainant and the Conducting Office shall first have had notice and an opportunity to comment.

(c)(1) The Complainant may present a request for corrective action directly to the Director within 60 calendar days of receipt of notification of termination of an investigation by the Conducting Office or at any time after 120 calendar days from the date the Complainant first notified an Investigative Office of an alleged reprisal if the Complainant has not been notified by the Conducting Office that it will seek corrective action. The Director shall notify the FBI of the receipt of the request and allow the FBI 25 calendar days to respond in writing. If the Complainant presents a request for corrective action to the Director under this paragraph, the Conducting Office may continue to seek corrective action specific to the Complainant, including the submission of a report to the Director, only with the Complainant's consent. Notwithstanding the Complainant's refusal of such consent, the Conducting Office may continue to investigate any violation of law, rule, or regulation.

(2) The Director may not direct the Conducting Office to reinstate an investigation that the Conducting Office has terminated in accordance with § 27.3(h).

(d) Where a Complainant has presented a request for corrective action to the Director under paragraph (c) of this section, the Complainant may at any time request the Director to order a stay of any personnel action allegedly taken or to be taken in reprisal for a protected disclosure. The request for a stay must be in writing, and the FBI shall have an opportunity to respond. The request shall be granted within 10 business days of the receipt of any response by the FBI if the Director determines that such a stay would be appropriate. A stay granted under this paragraph shall remain in effect for such period as the Director deems appropriate. The Director may modify or dissolve a stay under this paragraph at any time if the Director determines that such a modification or dissolution is appropriate.

(e)(1) The Director shall determine, based upon all the evidence, whether a protected disclosure was a contributing factor in a personnel action taken or to be taken. Subject to paragraph (e)(2) of this section, if the Director determines that a protected disclosure was a contributing factor in a personnel action taken or to be taken, the Director shall order corrective action as the Director deems appropriate. The Director may conclude that the disclosure was a contributing factor in the personnel action based upon circumstantial evidence, such as evidence that the employee taking the personnel action knew of the disclosure or that the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.

(2) Corrective action may not be ordered if the FBI demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

(3) In making the determinations required under this subsection, the Director may hold a hearing at which the Complainant may present evidence in support of his or her claim, in accordance with such procedures as the Director may adopt. The Director is hereby authorized to compel the attendance and testimony of, or the production of documentary or other evidence from, any person employed by the Department if doing so appears reasonably calculated to lead to the discovery of admissible evidence, is not otherwise prohibited by law or regulation, and is not unduly burdensome. Any privilege available in judicial and administrative proceedings relating to the disclosure of documents or the giving of testimony shall be available before the Director. All assertions of such privileges shall be decided by the Director. The Director may, upon request, certify a ruling on an assertion of privilege for review by the Deputy Attorney General.

(f) If the Director orders corrective action, such corrective action may include: placing the Complainant, as nearly as possible, in the position he would have been in had the reprisal not taken place; reimbursement for attorneys fees, reasonable costs, medical costs incurred, and travel expenses; back pay and related benefits; and any other reasonable and foreseeable consequential damages.

(g) If the Director determines that there has not been a reprisal, the Director shall report this finding in writing to the complainant, the FBI, and the Conducting Office.

§ 27.5 Review.

The Complainant or the FBI may request, within 30 calendar days of a final determination or corrective action order by the Director, review by the Deputy Attorney General of that determination or order. The Deputy Attorney General shall set aside or modify the Director's actions, findings, or conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence. The Deputy Attorney General has full discretion to review and modify corrective action ordered by the Director, provided, however that if the Deputy Attorney General upholds a finding that there has been a reprisal, then the Deputy Attorney general shall order appropriate corrective action.

§ 27.6 Extensions of time.

The Director may extend, for extenuating circumstances, any of the time limits provided in these regulations relating to proceedings before him and to requests for review by the Deputy Attorney General.

Dated: October 6, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–27898 Filed 10–29–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 538, 550 and 560

Sudanese Sanctions Regulations; Libyan Sanctions Regulations; Iranian Transactions Regulations: Licensing of Commercial Sales, Exportation and Reexportation of Agricultural Commodities and Products, Medicine, and Medical Equipment; Iranian Accounts on the Books of U.S. Depository Institutions; Informational Materials; Visas

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Treasury Department is amending provisions relating to the financing of agricultural and medical sales appearing in the Sudanese Sanctions Regulations, the Libyan Sanctions Regulations, and the Iranian Transactions Regulations. While general licenses continue to prohibit financing of sales by entities of the Governments of Sudan, Libya or Iran, the amendments remove language prohibiting the issuance of specific licenses authorizing financing by entities of those governments. New appendices are added to identify approved eligible procurement bodies of the Governments of Libya and Iran. Technical changes are made in all three sets of regulations with respect to licensing requirements of other Federal agencies. Technical changes are made in the Iranian Transactions Regulations concerning debits and credits to Iranian accounts on the books of U.S. depository institutions and concerning eligible purchasers. Finally, technical changes are made to the Iranian Transactions Regulations to revise language on informational materials and on "H" (temporary worker) visas.

EFFECTIVE DATE: October 27, 1999.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480) or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, U.S. Treasury Department, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register.** By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On April 28, 1999, President Clinton announced that existing unilateral economic sanctions programs would be amended to modify licensing policies to allow specific licensing of the commercial sale of agricultural commodities and products, medicine and medical equipment where the United States Government has the discretion to issue such licenses. On August 2, 1999, the Treasury Department's Office of Foreign Assets Control ("OFAC") published in the **Federal Register** (64 FR 41784) amendments to the Sudanese Sanctions Regulations, 31 CFR part 538 (the "SSR"), the Libyan Sanctions Regulations, 31 CFR part 550 (the "LSR"), and the Iranian Transactions Regulations, 31 CFR part 560 (the "ITR") (collectively, the "Regulations"), to make available both general and specific licenses governing commercial sales of such goods.

The amendments permitted sellers, pursuant to an OFAC general license, to negotiate and sign executory contracts for commercial sales and exportation or reexportation of these agricultural or medical items to the target countries or their governments. Performance under such executory contracts was to be made contingent upon receipt of an OFAC specific license. Regulations, §§ 538.523, 550.569 and 560.530. Persons wishing to make commercial sales of certain bulk agricultural commodities to the target countries or their governments could apply for specific licenses to permit future entry into and performance of contracts for such sales. Regulations, § 538.524 and SSR, appendix A; § 550.570 and LSR, appendix A; § 560.531 and ITR, appendix B. The Regulations made all sales to the target countries subject to a series of requirements intended to ensure that such sales did not improperly benefit the target countries' governments.

With respect to payment for and financing of sales of agricultural and medical items, the Regulations provided by general license that parties were authorized, among other things, to utilize financing by third-country financial institutions that were not U.S. persons or target-country government banks. U.S. financial institutions were authorized by general license to advise or confirm such financing by third-country financial institutions, but specific licenses were required for alternate payment terms. Regulations, §§ 538.525, 550.571, and 560.532.

OFAC is amending provisions relating to payment for and financing of sales of agricultural and medical items. The general licenses in §§ 538.525(a), 550.571(a), and 560.532(a) of the Regulations continue to prohibit financing of sales by entities of the Governments of Sudan, Libya or Iran. Sections 538.525(b), 550.571(b), and 560.532(b), which provide for the specific licensing of alternative financing terms, are amended to remove language prohibiting the issuance of specific licenses authorizing financing by entities of those governments.

Technical revisions are made to language on licensing requirements of other Federal agencies in §§ 538.523(b)(4), 538.524(b)(4), and 538.526(b)(3) of the SSR; 550.569(b)(4), 550.570(b)(4) and 550.572(b)(3) of the LSR; and 560.530(b)(4), 560.531(b)(4), and 560.533(b)(3) of the ITR. Approved eligible procurement bodies of the Governments of Libya and Iran are identified in new appendices to the LSR and ITR.

Sections 550.569(a) of the LSR and 560.530(a) of the ITR are revised to conform the language on executory contracts to that in § 538.523(a) of the SSR. Technical changes are made to §§ 560.532(c) and 560.533(c) of the ITR to clarify that the prohibition on debits and credits to Iranian accounts refers only to accounts of persons located in Iran or of the Government of Iran maintained on the books of a U.S. depository institution.

OFAC is making technical changes to the ITR unrelated to the August 1999 amendments. Section 560.210(c)(2), with respect to informational materials, is amended to remove a reference to royalties. Section 560.505(c) is amended to revise the reference from "H–1b (temporary worker)" to "H (temporary worker)."

Paperwork Reduction Act

As authorized in the APA, the Regulations are being issued without prior notice and public comment procedure. The collections of

information related to the Regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget ("OMB") under control number 1505–0164. 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.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the APA requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

List of Subjects

31 CFR Part 538

Administrative practice and procedure, Agricultural commodities, Banks, banking, Blocking of assets, Drugs, Exports, Foreign trade, Humanitarian aid, Imports, Medical devices, Penalties, Reporting and recordkeeping requirements, Specially designated nationals, Sudan, Terrorism, Transportation.

31 CFR Part 550

Administrative practice and procedure, Agricultural commodities, Banks, banking, Blocking of assets, Drugs, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Medical devices, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Terrorism, Travel restrictions.

31 CFR Part 560

Administrative practice and procedure, Agricultural commodities, Banks, banking, Drugs, Exports, Foreign trade, Imports, Information, Investments, Iran, Loans, Medical devices, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

For the reasons set forth in the preamble, 31 CFR parts 538, 550 and 560 are amended as set forth below:

PART 538—SUDANESE SANCTIONS REGULATIONS

1. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. In § 538.523, revise the section heading and the first sentence of paragraph (b)(4) to read as follows:

§ 538.523 Commercial sales, exportation and reexportation of agricultural commodities and products, medicine, and medical equipment.

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

3. In § 538.524, revise the section heading and the first sentence of paragraph (b)(4) to read as follows:

§ 538.524 Commercial sales, exportation and reexportation of bulk agricultural commodities.

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

4. In § 538.525, revise the first sentence of paragraph (b) to read as follows:

§ 538.525 Payment for and financing of commercial sales of agricultural commodities and products, medicine, and medical equipment.

* * * * *

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to §§ 538.523 and 538.524. * * *

* * * * * * *

5. In § 538.526, revise the first sentence of paragraph (b)(3) to read as follows:

§ 538.526 Brokering sales of bulk agricultural commodities.

* * * * *

(b) * * *

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c, 2349aa–8 and 2349aa–9; 31 U.S.C. 321(b); 49 U.S.C. 40106(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12543, 51 FR 875, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 51 FR 1235, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, 3 CFR, 1992 Comp., p. 294.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. In § 550.569, revise the section heading, paragraph (a) introductory text, and the first sentence of paragraph (b)(4) to read as follows:

§ 550.569 Commercial sales, exportation and reexportation of agricultural commodities and products, medicine, and medical equipment.

(a) *General license for executory contracts.* Except as provided in paragraph (c) of this section, entry into executory contracts is authorized for the following transactions with individuals in Libya acting for their own account, nongovernmental entities in Libya or procurement bodies of the Government of Libya identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state, or with persons in third countries purchasing specifically for resale to any of the foregoing, provided that performance of the executory contracts (including any preparatory activities, payments or deposits related to such executory contracts) is contingent upon the prior authorization of the Office of Foreign Assets Control in or pursuant to this part:

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

3. In § 550.570, revise the section heading and the first sentence of paragraph (b)(4) to read as follows:

§ 550.570 Commercial sales, exportation and reexportation of bulk agricultural commodities.

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

4. In § 550.571, revise the first sentence of paragraph (b) to read as follows:

§ 550.571 Payment for and financing of commercial sales of agricultural commodities and products, medicine, and medical equipment.

* * * * *

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to §§ 550.569 and 550.570.

* * *

* * * * *

5. In § 550.572, revise the first sentence of paragraph (b)(3) to read as follows:

§ 550.572 Brokering sales of bulk agricultural commodities.

* * * * *

(b) * * *

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

6. Appendix B is added to part 550 to read as follows:

Appendix B to Part 550—Eligible Procurement Bodies

This Appendix B sets forth eligible procurement bodies of the Government of Libya identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state. See § 550.570(e).

National Supply Corporation (a.k.a. National Supplies Corporation; a.k.a. NASCO)

PART 560—IRANIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 2349aa-9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart B—Prohibitions

2. In § 560.210, revise the last sentence of paragraph (c)(2) to read as follows:

§ 560.210 Exempt transactions.

* * * * *

(c) * * *

(2) * * * Transactions that are prohibited notwithstanding this section include, but are not limited to, payment of advances for information and informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications), and provision of services to market, produce or co-produce, create or assist in the creation of information and informational materials.

* * * * *

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 560.505 [Amended]

3. In § 560.505, amend paragraph (c) by revising the phrase "H–1b (temporary worker)" to read "H (temporary worker)".

4. In § 560.530, revise the section heading, paragraph (a) introductory text, and the first sentence of paragraph (b)(4) to read as follows:

§ 560.530 Commercial sales, exportation and reexportation of agricultural commodities and products, medicine, and medical equipment.

(a) *General license for executory contracts.* Except as provided in paragraph (c) of this section, entry into executory contracts is authorized for the following transactions with individuals in Iran acting for their own account, nongovernmental entities in Iran or procurement bodies of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state, or with persons in third countries purchasing specifically for resale to any of the foregoing, provided that performance of the executory contracts (including any preparatory activities, payments or deposits related to such executory contracts) is contingent upon the prior authorization of the Office of Foreign Assets Control in or pursuant to this part:

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

5. In § 560.531, revise the section heading and the first sentence of paragraph (b)(4) to read as follows:

§ 560.531 Commercial sales, exportation and reexportation of certain bulk agricultural commodities.

* * * * *

(b) * * *

(4) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

* * * * *

6. In § 560.532, revise the first sentence in paragraph (b) and paragraph (c) to read as follows:

§ 560.532 Payment for and financing of commercial sales of agricultural commodities and products, medicine, and medical equipment.

* * * * *

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to §§ 560.530 and 560.531.

* * *

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Nothing in this section authorizes payment terms or trade financing involving a debit or credit to an account of a person located in Iran or of the Government of Iran maintained on the books of a U.S. depository institution.

* * * * *

7. In § 560.533, revise the first sentence of paragraph (b)(3) and paragraph (c) to read as follows:

§ 560.533 Brokering sales of bulk agricultural commodities.

* * * * *

(b) * * *

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. * * *

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Payment for any brokerage fee earned pursuant to this section may not involve a debit or credit to an account of a person located in Iran or of the Government of Iran maintained on the books of a U.S. depository institution.

* * * * *

8. Appendix C is added to part 560 to read as follows:

Appendix C to Part 560—Eligible Procurement Bodies

This Appendix C sets forth eligible procurement bodies of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state. See § 560.531(e).

Government Trading Corporation (a.k.a. GTC).

State Livestock and Logistics Co. (a.k.a. State Livestock Affairs Logistics; a.k.a. SLAL).

Dated: October 27, 1999.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 27, 1999.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 99–28470 Filed 10–27–99; 2:25 pm]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6468–4]

Revisions to Emissions Budgets Set Forth in EPA's Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone for the States of Connecticut, Massachusetts and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of adverse comments, EPA is withdrawing a September 15, 1999 direct final rule (64 FR 49987) which would have revised the emissions budgets set forth in EPA's finding of significant contribution for purposes of reducing regional transport of ozone. Having withdrawn the direct final rule, EPA will take action on a proposed rule to revise the emissions budgets set forth in EPA's finding of significant contribution for purposes of reducing regional transport of ozone also published on September 15, 1999 (64 FR 50036) after EPA has evaluated the comments received.

DATES: The direct final rule to revise the emissions budgets in EPA's finding of significant contribution, which was published on September 15, 1999 (64 FR 49987), is hereby withdrawn as of November 1, 1999.

ADDRESSES: Docket No. A–99–13 is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, excluding holidays. The docket is located in the EPA's Air and Radiation Docket and Information Center, Waterside Mall. Room M–1500, 401 M Street, SW, Washington, DC 20460, or by calling (202)260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Kathryn Petrillo, Acid Rain Division (6204J) U.S. Environmental Protection Agency, 401 M Street SW, Washington DC 20460, telephone number (202) 564–9093; e-mail: petrillo.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION: On September 15, 1999, EPA published a direct final rule (64 FR 49987) and a parallel proposal (64 FR 50036) to revise the emissions budgets set forth in EPA's finding of significant contribution for purposes of reducing regional transport of ozone (63 FR 57356). These revisions would redistribute the total combined electricity generating unit portion of the state NO_X emissions budgets for Connecticut, Massachusetts, and Rhode Island in accordance with the Memorandum of Understanding signed by the three States and EPA in February 1999. The total combined electric generating unit budget for Connecticut, Massachusetts and Rhode Island would remain unchanged under the revisions. Additionally, the three States each agreed to retire 5% of the electric generating unit portion of their budgets for the benefit of the environment after the revisions are complete.

The EPA stated in the direct final rule that if adverse comments were received by October 5, 1999, EPA would publish a notice withdrawing the direct final rule before its effective date of November 1, 1999. The EPA received adverse comments on October 5, 1999 and is, therefore, withdrawing the direct final rule. The EPA will address these comments in a final rule addressing the emissions budgets for Connecticut, Massachusetts, and Rhode Island at a later date.

Dated: October 29, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–28519 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300891A; FRL–6390–4]

RIN 2070–AB78

Propargite; Partial Stay of Order Revoking Certain Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial stay of final rule.

SUMMARY: EPA is staying the revocation of tolerances for propargite on apples; and plums (fresh prunes) and is reinstating the tolerances for those commodities existing on October 18, 1999 until November 18, 1999. A final rule, subject to objections, revoking the tolerances for apples; and plums (fresh prunes) was published in the **Federal Register** on July 21, 1999 (64 FR 39068) (FRL–6089–7). EPA received an objection to the July 21, 1999 rule, which requested that the Agency modify the October 19, 1999 effective date for the final rule as it applied to the removal of the commodities apples; and plums (fresh prunes). EPA is staying the removal of the tolerances for apples, and plums (fresh prunes) effective from October 19, 1999 until November 18, 1999 in order to determine whether to grant the request for modification and if so, for what length of time. Revocations for the remaining tolerances in § 180.259 for apricots; beans, succulent; cranberries; figs; peaches; pears; and strawberries, subject to the July 21, 1999 rule remain effective October 19, 1999.

DATES: The reinstatement amendments are effective from October 19, 1999 until November 18, 1999.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, CM#2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300891A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #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.

II. What Action is the Agency Taking?

In the **Federal Register** of July 21, 1999 (64 FR 39068), EPA issued an order by final rule revoking tolerances in § 180.259 for the use of propargite on apples; apricots; beans, succulent; cranberries; figs; peaches; pears; plums (fresh prunes); and strawberries. EPA revoked the tolerances on the grounds that previous cancellation of the underlying uses for propargite rendered the tolerances unnecessary. In the final rule, EPA set an effective date of October 19, 1999 for the revocations.

Any person adversely affected by the July 21, 1999 Order was allowed 60 days to file written objections to the order and a written request for an evidentiary hearing on the objections.

EPA received an objection from Uniroyal Chemical Company requesting EPA to modify the effective date of revocation for propargite on apples; and plums (fresh prunes). Uniroyal also requested an evidentiary hearing.

By this document, in § 180.259(a)(1), EPA is staying the removal of the tolerances for apples; and plums (fresh prunes) from October 19, 1999 until November 18, 1999 in order to allow EPA to determine whether to grant the request for modification and if so, for what length of time. The addition of the entries for hops, dried; and tea, dried into the table under paragraph (a)(2) is not affected by this stay. Revocations for the remaining tolerances, apricots; beans, succulent; cranberries; figs; peaches; pears; and strawberries, subject to the July 21, 1999 rule remain effective October 19, 1999.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 19, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended to read as follows:

PART 180— [AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

b. In § 180.259, the table to paragraph (a)(1) is amended, effective from October 19, 1999 until November 18, 1999, by reinstating the entries for "apples" and "plums (fresh prunes)," to read as follows:

§ 180.259 Propargite; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * *	*
Apples	3
* * * *	*
Plums (fresh prunes)	7
* * * *	*

* * * * *

[FR Doc. 99–28488 Filed 10–27–99; 3:01 pm]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 990811217–9286–02; I.D. 061899A]

RIN 0648–AM82

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna Fishery; Regulatory Adjustment

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

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing the Atlantic highly migratory species (HMS) fisheries to remove the 250 metric ton (mt) limit on allocating Atlantic bluefin tuna (BFT) landings quota to the Purse Seine category. Without this restriction, the annual allocation of BFT to the Purse Seine category will be 18.6 percent of the total landings quota available to the United States. This regulatory amendment is necessary to achieve domestic management objectives for HMS fisheries as set forth in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). NMFS also amends the regulations governing the Atlantic HMS fisheries to reinstate the transferability of partial purse seine vessel quota allocations from one vessel to another, which was inadvertently dropped from the regulations when NMFS published the final consolidated rule to implement the HMS FMP.

DATES: Effective December 1, 1999.

ADDRESSES: Copies of supporting documents, including a Final Environmental Assessment (EA), which includes a Regulatory Impact Review (RIR), are available from Pat Scida, Highly Migratory Species Management Division, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Pat Scida, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). Within NMFS, daily responsibility for management of Atlantic HMS fisheries rests with the Office of Sustainable Fisheries, and is administered by the HMS Management Division.

Background information about the need for revisions to the HMS regulations was provided in the preamble to the proposed rule (64 FR 44885, August 18, 1999) in the HMS FMP, and in the final consolidated rule to implement the HMS FMP (64 FR 29090, May 28, 1999) and is not repeated here. The final EA contains further detail on the consequences of this action and alternatives. Copies of the final EA can be obtained from NMFS (see **ADDRESSES**).

By this final rule, NMFS removes the purse seine allocation cap under the framework provisions described in the FMP, and reinstates the transferability of Purse Seine category vessel allocations on a partial basis.

Comments and Responses

NMFS conducted two public hearings on the proposed rule and received written and oral comments over a 45-day comment period. The majority of the comments received were in support of the proposed rule, although NMFS did receive comments in opposition. Responses to the comments on the Purse Seine category allocation issue are provided here.

Opposed to the Proposed Rule

Comment 1: The Purse Seine category allocation gives too much quota to too few people, even with the cap. This is a misappropriation of a public resource.

Response: As described in the HMS FMP, NMFS bases the quota allocations on consideration of several factors, including the collection of the broadest possible array of scientific data and the optimization of social and economic benefits. When NMFS established the current limited entry system with non-transferable individual vessel quotas (IVQs) for purse seining in 1982, NMFS considered the relevant factors outlined in section 303(b)(6) of the Magnuson-Stevens Act. In 1992, NMFS established "baseline" quotas for all categories, which were based on the historical share of landings in each of these categories from 1983 through 1991 and were consistent with the need to collect scientific information required to monitor the stock. In 1995, NMFS reduced the Purse Seine category base quota by 51 mt, in large part because the West Atlantic BFT quota was a scientific monitoring quota at the time, and the Purse Seine category does not contribute to a catch per unit effort time series used to estimate trends in stock size, and other categories that do provide this information were subject to premature closures. This reduced quota was the basis for the allocations to the Purse Seine category from 1996 through 1998. Considering the historical participation of those in the purse seine fishery, NMFS does not believe that the 18.6 percent allocation to the Purse Seine category, with respect to the FMP objectives, constitutes an excessive share of the bluefin tuna quota.

Comment 2: The Purse Seine category cap should be maintained for the time being, and, eventually, the Purse Seine category quota should be reduced because there would be greater economic benefits to the Nation by distributing more quota to the recreational sector.

Response: Although reallocation of quota from the commercial sector to the recreational sector may provide greater economic benefits to the Nation, the Magnuson-Stevens Act requires allocations to be fair and equitable, to take into consideration traditional fishing patterns, and to minimize economic displacement. In addition, overfishing restrictions and recovery benefits (i.e., quota decreases or increases) must be shared by all sectors of a fishery. In fact, National Standard 5 states that no conservation and management measure should have economic allocation as its sole purpose. Considering all relevant factors, removal of the cap is justified.

Comment 3: The Purse Seine category should be eliminated, and the fishery should only be for rod and reel fishermen.

Response: NMFS disagrees. The purse seine fishery is a historical sector of the U.S. BFT fishery. As mentioned earlier, based on consideration of the historical participation of those in the fishery, NMFS does not believe that the allocation to the Purse Seine category constitutes an excessive share of the bluefin tuna quota.

Comment 4: The cap on the Purse Seine category should remain in place so long as the Purse Seine category is closed to new participants and other categories are open access.

Response: The fact that the Purse Seine category is managed under a limited access IVQ system and purse seine vessels remain somewhat isolated from competition while the other quota categories are not, was part of the justification for NMFS adopting the purse seine allocation cap in the HMS FMP. However, NMFS did note that the HMS Advisory Panel (AP) did not have an opportunity to address the Purse Seine quota in the context of a quota increase from ICCAT, and further noted that the agency would consider the future input of the AP on this issue. After extensive discussion, a clear majority of the AP favored removal of the cap on the Purse Seine category. Removal of the cap is consistent with the Magnuson-Stevens Act; otherwise, one quota category would have a cap while others do not. Thus, removing the cap contributes to the goal of fair and equitable allocation of restrictions needed to prevent overfishing. Furthermore, NMFS continues to investigate limited access in the other BFT quota categories (limited access has already been implemented for the Longline category) and will assess whether limited access in these other categories would be more effective in reducing the derby nature of these fisheries than increased allocations.

In Support of the Proposed Rule

Comment 5: Removal of the cap is consistent with the Magnuson-Stevens Act and the objectives of the HMS FMP. Specifically, allocations should be fair and equitable, should take into consideration traditional fishing patterns, and should minimize economic displacement. In addition, overfishing restrictions and recovery benefits (i.e., quota decreases or increases) must be shared by all sectors of a fishery. The Purse Seine category cap precludes one fishing sector from sharing the benefits of stock recovery.

Response: NMFS agrees. In this instance, limiting the quota allocation of one fishing sector while not limiting others is inconsistent with the

Magnuson-Stevens Act requirement of allocating overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery. This action is also consistent with the objectives of the FMP to preserve traditional fisheries and historical fishing patterns. The purse seine fishery is a historical part of the overall U.S. BFT fishery, having participated in the fishery since the 1950's.

Comment 6: The purse seiners have already had their quota reduced by a significant amount over the last decade and should not have their quota decreased further. Maintaining the cap would require greater allocation to other sectors, allowing smaller fish to be caught - the opposite of what stock rebuilding requires.

Response: NMFS agrees that the Purse Seine category BFT quota has been reduced over the past decade, as described. However, NMFS disagrees that, at current catch levels, maintaining the purse seine cap would negatively affect stock rebuilding. The amount of quota reallocated to other categories (8 mt under current quotas) if the cap were maintained would not significantly affect the size-composition of catch in order to effect rebuilding.

Comment 7: The AP supported removal of the cap, and NMFS should follow the AP's advice; otherwise, the AP process is undermined.

Response: As mentioned earlier and in the EA/RIR, the AP met in June 1999, and, after extensive discussion of the Purse Seine category cap issue, a clear majority favored removal of the cap. Given the considerations stated, it is appropriate in this instance to follow the AP's advice.

Comment 8: Elimination of the cap is inconsistent with the policy of promoting limited access. By capping only one sector of the fishery, citing the fact that it is limited access as a reason for the cap, sends a message that limiting access in a fishery may result in a category having its quota capped or reduced.

Response: The purpose of the purse seine cap was not related to promoting or discouraging limited access. NMFS continues to investigate limited access in the other BFT quota categories (limited access has already been implemented for the Longline category) and will assess whether limited access in these other categories may be more effective at reducing the derby nature of these fisheries than increased allocations.

Other

Comment 9: The removal of the cap on the Purse Seine category BFT allocation should not be tied by regulation or other administrative action to restrictions on current or future participation by purse seine vessels in the yellowfin tuna fishery. Through a 1995 rulemaking, the United States has already implemented the 1993 ICCAT recommendation to cap fishing effort on yellowfin tuna, with respect to purse seine gear, by limiting the number of vessels authorized to fish for yellowfin tuna.

Response: While action to limit access (vessel permits) to the purse seine fishery for yellowfin and other Atlantic tunas was taken in 1995 to implement the 1993 ICCAT recommendation, NMFS clarifies that no additional action is being taken at this time to restrict purse seine effort targeting Atlantic tunas other than bluefin. However, it is recognized that removing the cap on BFT allocation may contribute to limiting purse seine effort on yellowfin tuna by increasing purse seine effort in the BFT fishery. Further action may be necessary to implement the ICCAT yellowfin tuna recommendation in the future, including action affecting the purse seine fishery.

Classification

This rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The AA has determined that the regulations contained in this final rule are consistent with the FMP, the Magnuson-Stevens Act, and the 1998 ICCAT recommendation (ICCAT Rebuilding Program).

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. In addition, an RIR was prepared with a finding of no significant impact. The reasons this action is being adopted and the objectives of, and legal basis for, the final rule are as stated in the EA/RIR and the preamble to the proposed rule. There are no relevant Federal rules which duplicate, overlap, or conflict with the final rule. NMFS considered alternatives to the final action, including: no action (maintaining cap of 250 mt for the Purse Seine category) and reduction of the Purse Seine category share by 50 percent.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This final rule restates an information collection requirement relating to purse seine landings quota allocations. Written requests for purse seine allocations for Atlantic tunas and notification of transfers as required under § 635.27 are not currently approved by OMB. However, requests for purse seine allocations and transfer notifications are not subject to the PRA because, under current regulations, a maximum of five vessels could be subject to reporting under this requirement. Since it is impossible for 10 or more respondents to be involved, the information collection is exempt from the PRA clearance requirement.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. No comments were received that would alter the basis for this determination. Therefore, no Regulatory Flexibility Analysis was prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS initiated formal consultation on the HMS and billfish fisheries on May 12, 1998. The consultation request concerned the possible effects of management measures in the HMS FMP and Billfish Amendment. On April 23, 1999, NMFS issued a Biological Opinion (BO) under section 7 of the Endangered Species Act. The BO applies to the Atlantic pelagic fisheries for tunas, sharks, swordfish, and billfish.

The BFT purse seine fishery is currently listed as a category III fisheries under the Marine Mammal Protection Act. The BO states that it is NMFS' opinion that the continued operation of the purse seine fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS' Office of Protected Resources has concluded that this rulemaking would not cause any effect on listed species not previously considered in the BO and that reinitiation of consultation on the HMS FMP due to this rulemaking is not required.

The area in which purse seine fishing for BFT takes place has been identified as essential fish habitat for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council and the Highly Migratory Species Division of NMFS. It is not anticipated that this action will have any adverse impacts to

EFH and therefore no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: October 26, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

2. In § 635.27, introductory paragraph (a) and paragraphs (a)(4)(i) and (iii) are revised to read as follows:

§ 635.27 Quotas.

(a) *BFT.* Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits or HMS Charter/Headboat permits. Allocations of the BFT landings quota will be made according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent; Longline - 8.1 percent; and Trap - 0.1 percent. The remaining 2.5 percent of the BFT landings quota will be held in reserve for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas. BFT landings quotas are specified in whole weight.

* * * * *

(4) *Purse Seine category quota.* (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota. The Purse Seine fishery under this quota commences on August 15 each year.

* * * * *

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. Any purse seine vessel permit holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of such intent to NMFS, at an address designated by NMFS, 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (mt) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under § 635.23(e) are not altered by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether retained.

* * * * *

[FR Doc. 99–28464 Filed 10–27–99; 11:33 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 102699D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment closing the season for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This adjustment is necessary to prevent the underharvest of the 1999 pollock total allowable catch (TAC) specified to the inshore component in the Bering Sea subarea of the BSAI.

DATES: Effective 1800 hrs, Alaska local time (A.l.t.),October 26, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

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

In accordance with section 206(b)(1) of the American Fisheries Act, 50 percent of the remainder of the pollock TAC in the BSAI after the subtraction of the allocation to the pollock Community Development Quota and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species shall be allocated as a directed fishing allowance to catcher vessels harvesting pollock for processing by the inshore component. The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999), and subsequent reallocation (64 FR 56474, October 20, 1999), established the final 1999 amount of pollock allocated for processing by the inshore component of the Bering Sea subarea as 424,187 metric tons.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI.

Current information shows the catching capacity of vessels catching pollock for processing by the inshore component is in excess of 5,000 mt per day.

Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. The Administrator, Alaska Region, NMFS, has determined that the remaining portion of the allocation to the inshore component would be underharvested if a 1200 hrs closure were allowed to occur.

NMFS, therefore, in accordance with § 679.25(a)(1)(i), is adjusting the season for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea by closing directed fishing at 1800 hrs, A.l.t., October 26, 1999. NMFS is taking this action to prevent the underharvest of the pollock allocation to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI as authorized by § 679.25(a)(2)(i)(C). In accordance with § 679.25(a)(2)(iii), NMFS has determined that closing the season at 1800 hrs on October 26, 1999 is the least restrictive management adjustment to harvest the pollock allocated to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI and will allow other fisheries to continue in noncritical areas and time periods.

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

Classification

This action responds to the TAC limitations and other restrictions on the fisheries established in the 1999 harvest specifications for groundfish for the BSAI. Without this inseason adjustment, the pollock allocation for vessels catching pollock for processing by the inshore component in the Bering Sea of the BSAI could be underharvested, by 5,000 mt, resulting in an economic loss of more than five hundred thousand dollars.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until November 12, 1999.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

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

Dated: October 26, 1999.

Richard W. Surdi,

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

[FR Doc. 99–28438 Filed 10–27–99; 10:21 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 210
Monday, November 1, 1999

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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Proposed rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) proposes to amend its rules of practice and procedure with respect to the notice an agency must provide when it takes an appealable action against an employee who has both a right to appeal to the Board and a right to file a grievance under a grievance procedure. The proposed amendment is intended to ensure that such an employee understands the consequences of making a choice between the MSPB appeal procedure and the grievance procedure. It also is intended to ensure that, where an employee may pursue both procedures (as in the case of preference eligible employees of the United States Postal Service), the employee understands that the Board's time limit for filing an appeal will not be modified or extended if the employee files a grievance. The proposed amendment would also clarify that preference eligible employees of the United States Postal Service and other employees excluded from the coverage of the Federal Labor-Management Relations Statute may not seek MSPB review of a final arbitration decision.

DATES: Submit comments by January 3, 2000.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board is proposing this amendment to its rules of practice and procedure as part of its continuing effort to ensure that its customers understand the procedural rights to which they are entitled and the procedures they are required to follow to ensure full and fair adjudication of their claims.

Many Federal employees who may appeal an agency personnel action to the Board may also have the right to pursue the matter under a statutory grievance procedure or a negotiated grievance procedure (NGP) under a collective bargaining agreement (CBA). Where an employee is affected by a personnel action that can either be appealed to MSPB or grieved in accordance with a grievance procedure, it is especially important that the agency notice of MSPB appeal rights required by 5 CFR 1201.21 fully explain the consequences of choosing the appeal or grievance procedure. Given the various laws and CBAs that come into play, it is essential that agency notices of appeal and grievance rights state the situation clearly with respect to the particular employee against whom the action is being taken.

Most Executive Branch agencies and their employees are subject to the Federal Labor-Management Relations Statute (5 U.S.C. 7101, et. seq., hereafter the Statute). Under 5 U.S.C. 7121, most matters appealable to the Board that are also covered under the NGP of a CBA may only be challenged through the NGP (5 U.S.C. 7121(a)(1)). There are certain exceptions, however.

- If the employee is challenging an adverse action under 5 U.S.C. 7512 or an action based on unacceptable performance under 5 U.S.C. 4303, the employee may choose to appeal to the Board or file a grievance but may not do both (5 U.S.C. 7121(e)).
- If the employee raises a claim of prohibited discrimination in connection with an action that is appealable to the Board, the employee may choose to appeal to the Board (or to raise the matter under any other applicable statutory procedure, such as an EEO complaint filed with the agency under the regulations of the Equal Employment Opportunity Commission) or file a grievance but may not do both (5 U.S.C. 7121(d)).
- If the employee raises a claim that an action appealable to the Board was based on a prohibited personnel practice other than discrimination, the employee may choose to appeal to the Board, file a prohibited personnel practice complaint with the Special Counsel, or file a grievance but may choose only one of these procedures (5 U.S.C. 7121(g)).

The employee's choice of procedure is determined by his first filing. If he chooses to file a grievance, he may not subsequently file an appeal with the Board. Once the grievance procedure is chosen, there is no further opportunity for Board consideration of the matter, except that in matters that include a claim of prohibited discrimination, the employee may obtain Board review of the final decision of an arbitrator in accordance with 5 U.S.C. 7121(d) and 5 U.S.C. 7702. It is essential that agency notices to employees covered by the Statute clearly convey these statutory requirements governing the choice between the MSPB appeal procedure (and any other applicable statutory procedure) and the grievance procedure.

For employees not covered by the Statute (see 5 U.S.C. 7103(a)(2)–(3) and (b)), the rules governing the choice between appeal and grievance procedures are far less uniform. The choices of such employees may be governed by statute, the NGP in a CBA, or both. The provisions of CBAs, of course, are particularly subject to change as new agreements are negotiated. The following are three examples of the different rules that apply outside the coverage of the Statute.

- A preference eligible employee in the U.S. Postal Service (which is excluded from the coverage of the Statute pursuant to the Postal Reorganization Act) may be able to file both an MSPB appeal and a grievance on the same matter under the terms of the applicable CBA. If an appeal is filed first, a grievance may still be filed as long as a hearing on the MSPB appeal has not begun or the record has not been closed if there was no hearing. If a grievance is filed first, an appeal may still be filed with MSPB but must be filed within the Board's filing time limit.
- Employees in the Tennessee Valley Authority (TVA) may appeal certain RIF actions to MSPB. TVA preference eligible employees may also appeal adverse actions. Under the terms of the current CBAs at TVA, if an employee files an appeal with MSPB and

subsequently files a grievance, the grievance will not be accepted. If the employee files a grievance and subsequently files an appeal with MSPB, the processing of the grievance will terminate. As is the case with the USPS, filing a grievance has no effect on the time limit for filing a MSPB appeal.

• Foreign Service employees in the State Department and other designated agencies are also excluded from the Statute. Career and career-candidate Foreign Service employees have the right to appeal RIF actions to MSPB. Such employees also have the option but only under specific circumstances to file a grievance on a RIF matter with the Foreign Service Grievance Review Board (FSGRB). If the employee files a grievance with the FSGRB first, the Board has no jurisdiction over any subsequent MSPB appeal. If the employee appeals to MSPB first, a grievance is precluded. (20 U.S.C. 4010a(c).) Again, filing a grievance has no effect on the time limit for filing a MSPB appeal.

Two recent cases—both involving employees not covered by the Statute—illustrate the problems that can result from incomplete or ambiguous agency notices regarding appeal and grievance rights. In *Lourie* v. *United States Postal Service,* 82 M.S.P.R. 119 (1999), the appellant (a preference eligible employee in the Postal Service), relying on a statement in the agency's decision letter (DL) that he could file with MSPB after his grievance went to arbitration, filed his appeal after the 30-day time limit had passed and was, therefore, untimely. The Board found that while the DL correctly informed the appellant that he could file an appeal with the Board and also file a grievance on the same matter, and while it described the circumstances under which one could be filed after the filing of the other, it failed to advise the appellant that filing a grievance would not relieve him from complying with the 30-day time limit for filing an appeal with MSPB. The Board ruled, therefore, that the appellant showed good cause for the untimely filing of his MSPB appeal because the notice language in the DL was ambiguous.

In *Delaney* v. *Agency for International Development,* 80 M.S.P.R. 146 (1998), the appellant (a career Foreign Service employee) filed an appeal of his separation by RIF with MSPB after having first filed a grievance with the Foreign Service Grievance Review Board, which ruled that the grievance did not come within its limited review authority. As a result, the MSPB appeal was untimely and also raised an issue of Board jurisdiction because of the prior election of the grievance procedure. The Board found that the agency's notice regarding the appellant's appeal and grievance rights did not adequately inform him of the limitations on the scope of his grievance rights ("cases of reprisal, interference in the conduct of an employee's official duties, or similarly inappropriate use of the authority of this section," 22 U.S.C. 4010a(c)) and therefore precluded an informed election of procedures. The Board ruled, as a result, that the appeal was within its jurisdiction and that the appellant had shown good cause for his untimely filing.

Because of the problems illustrated by these cases, and the multiplicity of circumstances that apply depending on the agency and employee involved, the Board has concluded that its rule at 5 CFR 1201.21 should be expanded to include specific criteria that an agency notice of appeal and grievance rights must meet. Therefore, the Board proposes to amend that section to require that a notice of any applicable grievance right include information as to:

• Whether choosing the grievance procedure will result in waiver of the employee's right to file an appeal with the Board;

• Whether both an appeal and grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board; and

• Whether there is any right to request Board review of a final arbitration decision in accordance with 5 CFR 1201.154(d).

The Board also proposes to amend 5 CFR 1201.154(d). Although this provision applies by its plain language only to employees covered by the Statute, some employees who are not covered by the Statute (particularly in USPS) continue to file requests with the Board to review a final arbitration decision. The proposed amendment would qualify the term "appellant" to clarify that it does not include any USPS employee or any other employee excluded from the Statute.

The Board is publishing this rule as a proposed rule pursuant to 5 U.S.C. 1204(h). The Board has made a determination under the Regulatory Flexibility Act, Pub. L. 96–354, 95 Stat. 1164, 5 U.S.C. 601–612, that this proposed regulatory action would not have a significant impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board proposes to amend 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 would continue to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Amend § 1201.21 by revising paragraph (d) to read as follows:

§ 1201.21 Notice of appeal rights.

* * * * *

(d) Notice of any right the employee has to file a grievance, including:

(1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board; and

(3) Whether there is any right to request Board review of a final arbitration decision in accordance with 5 CFR 1201.154(d).

3. Amend § 1201.154 by revising the introductory text paragraph (d) to read as follows:

§ 1201.154 Time for filing appeal; closing record in cases involving grievance decisions.

* * * * *

(d) If the appellant, *other than an employee of the Postal Service or any other employee excluded from the coverage of chapter 71 of title 5, United States Code,* has filed a grievance with the agency under its negotiated grievance procedure in accordance with 5 U.S.C. 7121, he may ask the Board to review the final decision under 5 U.S.C. 7702 within 35 days after the date of issuance of the decision or, if the appellant shows that the decision was received more than 5 days after the date of issuance, within 30 days after the date the appellant received the decision. The appellant must file the request with the Clerk of the Board, Merit Systems Protection Board, Washington, DC 20419. The request for review must contain:

* * * * *

Dated: October 25, 1999.
Robert E. Taylor,
Clerk of the Board.
[FR Doc. 99–28285 Filed 10–29–99; 8:45 am]
BILLING CODE 7400–01–U

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS99–1]

Appraisal Subcommittee; Appraiser Regulation; Disclosure of Information

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council ("ASC").
ACTION: Proposed rules.

SUMMARY: The ASC proposes to amend its regulations governing the public disclosure of information to reflect changes to the Freedom of Information Act ("FOIA") as a result of the enactment of the Electronic Freedom of Information Act Amendments of 1996 ("E–FOIA"). Among other things, the proposed rules implement expedited FOIA processing procedures; implement processing deadlines and appeal rights created by E–FOIA; and describe the expanded range of records available to the public through the ASC's Internet World Wide Web site (http://www.asc.gov).

DATES: Comments must be received on or before December 1, 1999.

ADDRESSES: Send written comments to Ben Henson, Executive Director, Attention: Docket No. AS99–1; ASC, 2000 K Street, NW, Suite 310; Washington, DC 20006. Comments may be faxed to the ASC at (202) 872–7501 or sent via Internet e-mail at benhl@asc.gov. Comments may be inspected and photocopied at the ASC's office between 9:00 a.m. and 4:30 p.m. on business days. Comments also will be posted on the ASC's Web site for review and downloading.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, at (202) 872–7520 or marcwl@asc.gov; Appraisal Subcommittee; 2000 K Street, NW, Suite 310; Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

Section-by-Section Analysis

E–FOIA, Public Law 104–231, amended the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Among other things, E–FOIA requires agencies to promulgate regulations that provide for expedited processing of certain requests for records. Changes are proposed to 12 CFR part 1102, subpart D ("subpart") to comply with the E–FOIA requirements for expedited processing. In addition, the ASC is proposing changes to the subpart on fees and fee waivers, and portions of this subpart have been reorganized.

Section 1102.300 has been expanded to clarify the purpose and scope of the various sections found within the subpart. Section 1102.301 has been amended to incorporate several E–FOIA definitions. Section 1102.302 remains unchanged. Section 1102.303 has been updated to reflect changes in the ASC's office address and staff organization. Current § 1102.304, which incorporated by reference the FOIA regulations of the Federal Financial Institutions Examination Council ("FFIEC"), has been deleted. New § 1102.304 specifies records that must be published in the **Federal Register** under FOIA. Section 1102.305 identifies the ASC's Internet World Wide Web site as the primary source of ASC information and describes the information that is made available over the Internet as required by E–FOIA. The section also sets out the categories of information that are publicly available upon request. The ASC notes that the records provided over the Internet cover a much smaller scope than those available by request. E–FOIA only requires the ASC to place on the Internet records created after November 1, 1996. The ASC, however, is increasing the resources available over the Internet on its World Wide Web site.

Section 1102.306 describes the ASC's procedures for processing FOIA requests. This section essentially is new because it no longer incorporates by reference the FFIEC's FOIA rules. It also reflects the changes required by E–FOIA. Because of the small size of the ASC and the dearth of FOIA requests received, the ASC has determined not to provide multitrack processing. The proposal, however, would provide expedited processing where a requester has demonstrated a compelling need for the records, or where the ASC has determined to expedite the response. The time limit for expedited processing is set at ten business days, with expedited procedures available for an appeal of the ASC's determination not to provide expedited processing. Under E–FOIA, there are only two types of circumstances that can meet the compelling need standard: Where failure to obtain the records expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. For ease of administration and consistency, the proposal uses the term "representative of the news media" to describe a person primarily engaged in disseminating information. To demonstrate a compelling need, a requester must submit a certified statement, a sample of which may be obtained from the ASC.

All information requests that do not meet expedited processing standards will be handled under regular processing procedures, as required by FOIA and E–FOIA. The statutory time limit for regular-track processing would be extended to twenty business days, pursuant to E–FOIA, from the previous ten business days.

Section 1102.306(e) contains the FOIA fees and the standards for waiver of fees. The fee provisions have been revised to clarify that the processing time of a FOIA request does not begin until: (1) Payment is received when payment in advance is required, or (2) a person has requested a fee waiver and has not agreed to pay the fees if the waiver request is denied.

New Section 1102.307 covers the disclosure of exempt records. The section prohibits the disclosure of exempt records, and, at the same time, authorizes the ASC, through its Chairman or Executive Director, to release certain types of otherwise exempt records upon receipt of a written request specifically identifying the subject records and providing sufficient information for the ASC to evaluate whether good cause for disclosure exists.

The next two sections, 1102.308 and 1102.309, carry over unchanged current §§ 1102.30 and 1102.306, respectively.

The final section, 1102.310, is new. The section describes the procedures for serving subpoenas or other legal process on the ASC.

The ASC notes that the substantive portions of these proposals are based on 12 CFR part 309, the Federal Deposit Insurance Corporation's regulations concerning the disclosure of information.

Regulatory Flexibility Act Analysis

Pursuant to § 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the ASC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. These amendments simplify some of the procedures regarding release of information and require disclosure of information in certain instances in accordance with law. The requirements to disclose apply to the ASC; therefore, they should not have a

significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

The collection of information contained in this proposed rule is found at 12 CFR part 1102, subpart D and has been submitted to the Office of Management and Budget ("OMB") for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*). Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the ASC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the 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.

Comments should be addressed to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Desk Officer Alexander Hunt; New Executive Office Building, Room 3208; Washington, DC 20503, with copies of such comments to Marc L. Weinberg, General Counsel; Appraisal Subcommittee; 2000 K Street NW., Suite 310; Washington, DC 20006. All comments should refer to part 1102, subpart D. OMB is required to make a decision concerning the collections of information contained in the proposed regulations between 30 and 60 days after the 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 this publication. This does not affect the deadline for the public to comment to the ASC on the proposed regulation.

Title of collection: Requests for records pursuant to the Freedom of Information Act.

Summary of the collection: The name, address and telephone number of the requester; a statement whether the requester is an educational institution, noncommercial scientific institution, or news media representative; a statement agreeing to pay applicable fees or requesting a waiver or reduction of fees; and the form or format of responsive information requested, if other than paper copies.

Respondents—Persons who desire to obtain records pursuant to the Freedom of Information Act.

Estimate of Annual Burden—

Number of requests—24.

Time required to prepare a request—15 minutes.

Total annual burden hours—6 hours.

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisers, Banks, banking, Freedom of Information, Mortgages, Reporting and recordkeeping requirements.

Text of the Proposed Rule

For the reasons set forth in the preamble, the ASC is proposing to amend title 12, chapter XI of the Code of Federal Regulations as follows:

PART 1102—APPRAISER REGULATION

Subpart D—Description of Office, Procedures, Public Information

1. The authority citation for part 1102, subpart D continues to read as follows:

Authority: 5 U.S.C. 552, 553(e); and Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p 235).

2. Section 1102.300 is revised to read as follows:

§ 1102.300 Purpose and scope.

This part sets forth the basic policies of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") regarding information it maintains and the procedures for obtaining access to such information. This part does not apply to the Federal Financial Institutions Examination Council. Section 1102.301 sets forth definitions applicable to this part 1102, subpart D. Section 1102.302 describes the ASC's statutory authority and functions. Section 1102.303 describes the ASC's organization and methods of operation. Section 1102.304 describes the types of information and documents typically published in the **Federal Register**. Section 1102.305 explains how to access public records maintained on the ASC's World Wide Web site and at the ASC's office and describes the categories of records generally found there. Section 1102.306 implements the Freedom of Information Act ("FOIA") (5 U.S.C. 552). Section 1102.307 authorizes the discretionary disclosure of exempt records under certain limited circumstances. Section 1102.308 provides anyone with the right to petition the ASC to issue, amend, and repeal rules of general application. Section 1102.309 sets out the ASC's confidential treatment procedures. Section 1102.310 outlines procedures for serving a subpoena or other legal process to obtain information maintained by the ASC.

3. Section 1102.301 is revised to read as follows:

§ 1102.301 Definitions.

For purposes of this subpart:

(a) *ASC* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(b) *Commercial use request* means a request from, or on behalf of, a requester who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request falls within this category, the ASC will determine the use to which a requester will put the records requested and seek additional information as it deems necessary.

(c) *Direct costs* means those expenditures the ASC actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing records in response to a request for records.

(d) *Disclose* or *disclosure* mean to give access to a record, whether by producing the written record or by oral discussion of its contents. Where the ASC member or employee authorized to release ASC documents makes a determination that furnishing copies of the documents is necessary, these words include the furnishing of copies of documents or records.

(e) *Duplication* means the process of making a copy of a record necessary to respond to a request for records or for inspection of original records that contain exempt material or that cannot otherwise be directly inspected. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (*e.g.*, magnetic tape or computer disk).

(f) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(g) *Field review* includes, but is not limited to, formal and informal investigations of potential irregularities occurring at State appraiser regulatory agencies involving suspected violations of Federal or State civil or criminal laws, as well as such other investigations as may conducted pursuant to law.

(h) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis as that term is defined in paragraph (b) of this section, and which is operated

solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(i) *Record* includes records, files, documents, reports correspondence, books, and accounts, or any portion thereof, in any form the ASC regularly maintains them.

(j) *Representative of the news media* means any person primarily engaged in gathering news for, or a free-lance journalist who can demonstrate a reasonable expectation of having his or her work product published or broadcast by, an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the general public.

(k) *Review* means the process of examining documents located in a response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually and/or by computer using existing programming.

(m) *State appraiser regulatory agency* includes, but is not limited to, any board, commission, individual or other entity that is authorized by State law to license, certify, and supervise the activities of persons authorized to perform appraisals in connection with federally related transactions and real estate related financial transactions that require the services of a State licensed or certified appraiser.

4. Section 1102.303 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1102.303 Organization and methods of operation.

(a) * * *

(b) *ASC members and staff.* The ASC is composed of six members, each being designated by the head of their respective agencies: the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Office of Thrift Supervision, and the Department of Housing and Urban Development. Administrative support and substantive program, policy, and legal guidance for ASC activities are provided by a small, full-time, professional staff supervised by an Executive Director.

(c) * * *

(d) *ASC Address.* ASC offices are located at 2000 K Street, NW, Suite 310; Washington, DC 20006.

5. Section 1102.304 is revised to read as follows:

§ 1102.304 Federal Register publication.

The ASC publishes the following information in the **Federal Register** for the guidance of the public:

(a) Descriptions of its organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the ASC;

(e) Every amendment, revision or repeal of the foregoing; and

(f) General notices of proposed rulemaking.

6. Section 1102.305 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 1102.305 Publicly available records.

(a) *Records available on the ASC's World Wide Web site*—(1) *Discretionary release of documents.* The ASC encourages the public to explore the wealth of resources available on the ASC's Internet World Wide Web site, located at: *http://www.asc.gov.* The ASC has elected to publish a broad range to materials on its Web site.

(2) *Documents required to be made available via computer telecommunications.* (i) The following types of documents created on or after November 1, 1996, and required to be made available through computer telecommunications, may be found on the ASC's Internet World Wide Web site located at: *http://www.asc.gov:*

(A) Final opinions, including concurring and dissenting opinions, as well as final orders, made in the adjudication of cases;

(B) Statements of policy and interpretations adopted by the ASC that are not published in the **Federal Register**;

(C) Administrative staff manuals and instructions to staff that affect a member of the public;

(D) Copies of all records (regardless of form or format), such as correspondence relating to field reviews or other regulatory subjects, released to any person under § 1102.306 that, because of the nature of their subject matter, the ASC has determined are likely to be the subject of subsequent requests;

(E) A general index of the records referred to in paragraph (a)(2)(i)(D) of this section.

(ii) To the extent permitted by law, the ASC may delete identifying details when it makes available or publishes any records. If redaction is necessary, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction.

* * * * *

(c) *Applicble fees.* (i) If applicable, fees for furnishing records under this section are as set forth in § 1102.306(e).

(ii) Information on the ASC's World Wide Web site is available to the public without charge. If, however, information available on the ASC's World Wide Web site is provided pursuant to a Freedom of Information Act request processed under § 1102.306 then fees apply and will be assessed pursuant to § 1102.306(e).

7. Sections 1102.306 and 1102.307 are redesignated as §§ 1102.309 and 1102.308 respectively.

8. A new § 1102.306 is added to read as follows:

§ 1102.306 Procedures for requesting records.

(a) *Making a request for records.* (1) The request shall be submitted in writing to the Executive Director:

(i) By facsimile clearly marked "Freedom of Information Act Request" to (202) 872–7501;

(ii) By letter to the Executive Director marked "Freedom of Information Act Request"; 2000 K Street, NW, Suite 301; Washington, DC 20006; or

(iii) By sending Internet e-mail to the Executive Director marked "Freedom of Information Act Request" at his or her e-mail address listed on the ASC's World Wide Web site.

(2) The request shall contain the following information:

(i) The name and address of the requester, an electronic mail address, if available, and the telephone number at

which the requester may be reached during normal business hours;

(ii) Whether the requester is an educational institution, non-commercial scientific institution, or news media representative;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying a maximum fee that is acceptable to the requester, or a request for a waiver or reduction of fees that satisfies paragraph (e)(1)(x) of this section; and

(iv) The preferred form and format of any responsive information requested, if other than paper copies.

(3) A request for identifiable records shall reasonably describe the records in a way that enables the ASC's staff to identity and produce the records with reasonable effort and without unduly burdening or significantly interfering with any ASC operations.

(b) *Defective requests.* The ASC need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this subpart. The ASC may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(c) *Processing requests.* (1) *Receipt of requests.* Upon receipt of any request that satisfies paragraph (a) of this section, the Executive Director shall assign the request to the appropriate processing track pursuant to this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred by another agency, is the date the Executive Director actually receives the request.

(2) *Expedited processing.* (i) Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the ASC has determined to expedite the response, the ASC shall process the request as soon as practicable. To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(A) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) The requester can establish that it is primarily engaged in information dissemination as its main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the request; and

(C) The requester's statement must be certified to be true and correct to the best of the person's knowledge and belief and explain in detail the basis for requesting expedited processing.

(ii) The formality of the certification required to obtain expedited treatment may be waived by the Executive Director as a matter of administrative discretion.

(3) A requester seeking expedited processing will be notified whether expedited processing has been granted within ten (10) working days of the receipt of the request. If the request for expedited processing is denied, the requester may file an appeal pursuant to the procedures set forth in paragraph (g) of this section, and the ASC shall respond to the appeal within ten (10) working days after receipt of the appeal.

(4) *Priority of responses.* Consistent with sound administrative process, the ASC processes requests in the order they are received. However, in the ASC's discretion, or upon a court order in a matter to which the ASC is a party, a particular request may be processed out of turn.

(5) *Notification.* (i) The time for response to requests will be twenty (20) working days except:

(A) In the case of expedited treatment under paragraph (c)(2) of this section;

(B) Where the running of such time is suspended for the calculation of a cost estimate for the requester if the ASC determines that the processing of the request may exceed the requester's maximum fee provision or if the charges are likely to exceed $250 as provided for in paragraph (e)(1)(v) of this section;

(C) Where the running of such time is suspended for the payment of fees pursuant to the paragraph (c)(5)(i)(B) and (e)(1) of this section; or

(D) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and further described in paragraph (c)(5)(iii) of this section.

(ii) In unusual circumstances as referred to in paragraph (c)(5)(i)(D) of this section, the time limit may be extended for a period of:

(A) Ten (10) working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or

(B) Such alternative time period as agreed to by the requester or as reasonably determined by the ASC when the ASC notifies the requester that the request cannot be processed in the specified time limit.

(iii) Unusual circumstances may arise when:

(A) The records are in facilities that are not located at the ASC's Washington office;

(B) The records requested are voluminous or are not in close proximity to one another; or

(C) There is a need to consult with another agency or among two or more components of the ASC having a substantial interest in the determination.

(6) *Response to request.* In response to a request that satisfies the requirements of paragraph (a) of this section, a search shall be conducted of records maintained by the ASC in existence on the date of receipt of the request, and a review made of any responsive information located. To the extent permitted by law, the ASC may redact identifying details when it makes available or publishes any records. If redaction is appropriate, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The ASC shall notify the requester of:

(i) The ASC's determination of the request;

(ii) The reasons for the determination;

(iii) If the response is a denial of an initial request or if any information is withheld, the ASC will advise the requester in writing:

(A) If the denial is in part or in whole;

(B) The name and title of each person responsible for the denial (when other than the person signing the notification);

(C) The exemptions relied on for the denial; and

(D) The right of the requester to appeal the denial to the Chairman of the ASC within 30 business days following receipt of the notification, as specified in paragraph (h) of this section.

(d) *Providing responsive records.* (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the ASC or makes other acceptable arrangements, or the ASC deems it appropriate to send the documents by another means.

(2) The ASC shall provide a copy of the record in any form or format requested if the record is readily reproducible by the ASC in that form or format, but the ASC need not provide more than one copy of any record to a requester.

(3) By arrangement with the requester, the ASC may elect to send the responsive records electronically if a substantial portion of the request is in electronic format. If the information requested is made pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, it

will not be sent by electronic means unless reasonable security measures can be provided.

(e) *Fees* (1) *General rules.* (i) Persons requesting records of the ASC shall be charged for the direct costs of search, duplication, and review as set forth in paragraphs (e)(2) and (e)(3) of this section, unless such costs are less than the ASC's cost of processing the requester's remittance.

(ii) Requesters will be charged for search and review costs even if responsive records are not located or, if located, are determined to be exempt from disclosure.

(iii) Multiple requests seeking similar or related records from the same requester or group of requesters will be aggregated for the purposes of this section.

(iv) If the ASC determines that the estimated costs of search, duplication, or review of requested records will exceed the dollar amount specified in the request, or if no dollar amount is specified, the ASC will advise the requester of the estimated costs. The requester must agree in writing to pay the costs of search, duplication, and review prior to the ASC initiating any records search.

(v) If the ASC estimates that its search, duplication, and review costs will exceed $250, the requester must pay an amount equal to 20 percent of the estimated costs prior to the ASC initiating any records search.

(vi) The ASC ordinarily will collect all applicable fees under the final invoice before releasing copies of requested records to the requester.

(vii) The ASC may require any requester who has previously failed to pay charges under this section within 30 calendar days of mailing of the invoice to pay in advance the total estimated costs of search, duplication, and review. The ASC also may require a requester who has any charges outstanding in excess of 30 calendar days following mailing of the invoice to pay the full amount due, or demonstrate that the fee has been paid in full, prior to the ASC initiating any additional records search.

(viii) The ASC may begin assessing interest charges on unpaid bills on the 31st day following the day on which the invoice was sent. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the invoice.

(ix) The time limit for the ASC to respond to a request will not begin to run until the ASC has received the requester's written agreement under paragraph (e)(1)(iv) of this section, and advance payment under paragraph (e)(1)(v) or (vii) of this section, or payment of outstanding charges under paragraph (e)(1)(vii) or (viii) of this section.

(x) As part of the initial request, a requester may ask that the ASC waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Determinations as to a waiver or reduction of fees will be made by the Executive Director (or designee), and the requester will be notified in writing of his or her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the ASC's Chairman pursuant to the procedure set forth in paragraph (g) of this section.

(2) *Chargeable fees by category of requester.* (j) Commercial use requesters shall be charged search, duplication, and review costs.

(ii) Educational institutions, non-commercial scientific institutions, and news media representatives shall be charged duplication costs, except for the first 100 pages.

(iii) Requesters not described in paragraph (e)(2)(i) or (ii) of this section shall be charged the full reasonable direct cost of search and duplication, except for the first two hours of search time and first 100 pages of duplication.

(3) *Fee schedule.* The dollar amount of fees which the ASC may charge to records requesters will be established by the Executive Director. The ASC may charge fees that recoup the full allowable direct costs it incurs. Fees are subject to change as costs change. The fee schedule will be published periodically on the ASC's Internet World Wide Web site (*http://www.asc.gov*) and will be effective on the date of publication. Copies of the fee schedule may be obtained by request at no charge by contacting the Executive Director by letter, Internet email or facsimile.

(i) *Manual searches for records.* The ASC will charge for manual searches for records at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs.

(ii) *Computer searches for records.* The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs, and the operator's time apportioned to the search multiplied by the operator's basic rate of pay plus 16 percent to cover employee benefit costs.

(iii) *Duplication of records.* (A) The per-page fee for paper copy reproduction of documents is $.25.

(B) For other methods of reproduction or duplication, the ASC will charge the actual direct costs of reproducing or duplicating the documents, including each involved employee's basic rate of pay plus 16 percent to cover employee benefit costs.

(iv) *Review of records.* The ASC will charge commercial use requesters for the review of records at the time of processing the initial request to determine whether they are exempt from mandatory disclosure at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. The ASC will not charge at the administrative appeal level for review of an exemption already applied. When records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, the ASC may charge for a subsequent review to determine the applicability of other exemptions not previously considered.

(v) *Other services.* Complying with requests for special services, other than a readily produced electronic form or format, is at the ASC's discretion. The ASC may recover the full costs of providing such services to the requester.

(4) *Use of contractors.* The ASC may contract with independent contractors to locate, reproduce, and/or disseminate records; provided, however, that the ASC has determined that the ultimate cost to the requester will be no greater than it would be if the ASC performed these tasks itself. In no case will the ASC contract our responsibilities which FOIA provides that the ASC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees.

(f) *Exempt information.* A request for records may be denied if the requested record contains information that falls into one or more of the following categories.[1] If the requested record contains both exempt and nonexempt information, the nonexempt portions, which may reasonably be segregated from the exempt portions, will be released to the requester. If redaction is necessary, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the

[1] Classification of a record as exempt from disclosure under the provisions of this paragraph (f) shall not be construed as authority to withhold the record if it is otherwise subject to disclosure under the Privacy Act of 1974 (5 U.S.C. 552a) or other Federal statute, any applicable regulation of ASC or any other Federal agency having jurisdiction thereof, or any directive or order of any court of competent jurisdiction.

redaction. The categories of exempt records are as follows:

(1) Records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Records related solely to the internal personnel rules and practices of the ASC;

(3) Records specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential;

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the ASC;

(6) Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished records on a confidential basis;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the ASC or any agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(h) *Appeals.* (1) Appeals should be addressed to the Executive Director; ASC; 2000 K Street, NW, Suite 310; Washington, DC 20006.

(2) A person whose initial request for records under this section, or whose request for a waiver of fees under paragraph (e)(1)(x) of this section, has been denied, either in part or in whole, has the right to appeal the denial to the ASC's Chairman (or designee) within 30 business days after receipt of notification of the denial. Appeals of denials of initial requests or for a waiver of fees must be in writing and include any additional information relevant to consideration of the appeal.

(3) Except in the case of an appeal for expedited treatment under paragraph (c)(3) of this section, the ASC will notify the appellant in writing within 20 business days after receipt of the appeal and will state:

(i) Whether it is granted or denied in whole or in part;

(ii) The name and title of each person responsible for the denial (if other than the person signing the notification);

(iii) The exemptions relied upon for the denial in the case of initial requests for records; and

(iv) The right to judicial review of the denial under the FOIA.

(4) If a requester is appealing for denial of expedited treatment, the ASC will notify the appellant within ten business days after receipt of the appeal of the ASC's disposition.

(5) Complete payment of any outstanding fee invoice will be required before an appeal is processed.

(i) *Records of another agency.* If a requested record is the property of another Federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the ASC will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

9. A new § 1102.307 is added to read as follows:

§§ 1102.307 Disclosure of exempt records.

(a) *Disclosure prohibited.* Except as provided in paragraph (b) of this section or by 12 CFR part 1102, subpart C, no person shall disclose or permit the disclosure of any exempt records, or information contained therein, to any persons other than those officers, directors, employees, or agents of the ASC or a State appraiser regulatory agency who has a need for such records in the performance of their official duties. In any instance in which any person has possession, custody or control of ASC exempt records or information contained therein, all copies of such records shall remain the property of the ASC and under no circumstances shall any person, entity or agency disclose or make public in any manner the exempt records or information without written authorization from the Executive Director, after consultation with the ASC General Counsel.

(b) *Disclosure authorized.* Exempt records or information of the ASC may be disclosed only in accordance with the conditions and requirements set forth in this paragraph (b). Requests for discretionary disclosure of exempt records of information pursuant to this paragraph (b) may be submitted directly to the Executive Director. Such administrative request must clearly state that it seeks discretionary disclosure of exempt records, clearly identify the records sought, provide sufficient information for the ASC to evaluate whether there is good cause for disclosure, and meet all other conditions set forth in paragraph (b)(1) through (3) of this section. Authority to disclose or authorize disclosure of exempt records of the ASC is delegated to the Executive Director, after consultation with the ASC General Counsel.

(1) *Disclosure by Executive Director.* (i) The Executive Director, or designee, may disclose or authorize the disclosure of any exempt record in response to a valid judicial subpoena, court order, or other legal process, and authorize any current or former member, officer, employee, agent of the ASC, or third party, to appear and testify regarding an exempt record or any information obtained in the performance of such person's official duties, at any administrative or judicial hearing or proceeding where such person has been served with a valid subpoena, court order, or other legal process requiring him or her to testify. The Executive Director shall consider the relevancy of such exempt records or testimony to the litigation, and the interests of justice, in determining whether to disclose such records or testimony. Third parties seeking disclosure of exempt records or testimony in litigation to which the ASC is not a party shall submit a request for discretionary disclosure directly to the Executive Director. Such request shall specify the information sought with reasonable particularity and shall be

accompanied by a statement with supporting documentation showing in detail the relevance of such exempt information to the ligitation, justifying good cause for disclosure, and a commitment to be bound by a protective order. Failure to exhaust such administrative request prior to service of a subpoena or other legal process may, in the Executive Director's discretion, serve as a basis for objection to such subpoena or legal process.

(ii) The Executive Director, or designee, may in his or her discretion and for good cause, disclose or authorize disclosure of any exempt record or testimony by a current or former member, officer, employee, agent of the ASC, or third party, sought in connection with any civil or criminal hearing, proceeding or investigation without the service of a judicial subpoena, or other legal process requiring such disclosure or testimony, if he or she determines that the records or testimony are relevant to the hearing, proceeding or investigation and that disclosure is in the best interests of justice and not otherwise prohibited by Federal statute. Where the Executive Director or designee authorizes a current or former member, officer, director, employee or agent of the ASC to testify or disclose exempt records pursuant to this paragraph (b)(1), he or she may, in his or her discretion, limit the authorization to so much of the record or testimony as is relevant to the issues at such hearing, proceeding or investigation, and he or she shall give authorization only upon fulfillment of such conditions as he or she deems necessary and practicable to protect the confidential nature of such records or testimony.

(2) *Authorization for disclosure by the Chairman of the ASC.* Except where expressly prohibited by law, the Chairman of the ASC may, in his or her discretion, authorize the disclosure of any ASC records. Except where disclosure is required by law, the Chairman may direct any current or former member, officer, director, employee or agent of the ASC to refuse to disclose any record or to give testimony if the Chairman determines, in his or her discretion, that refusal to permit such disclosure is in the public interest.

(3) Limitations on disclosure. All steps practicable shall be taken to protect the confidentiality of exempt records and information. Any disclosure permitted by paragraph (b) of this section is discretionary and nothing in paragraph (b) of this section shall be construed as requiring the disclosure of information. Further, nothing in paragraph (b) of this section shall be construed as restricting, in any manner, the authority of the ASC, the Chairman of the ASC, the Executive Director, the ASC General Counsel, or their designees, in their discretion and in light of the facts and circumstances attendant in any given case, to require conditions upon, and to limit, the form, manner, and extent of any disclosure permitted by this section. Wherever practicable, disclosure of exempt records shall be made pursuant to a protective order and redacted to exclude all irrelevant or non-responsive exempt information.

10. Section 1102.310 is added as follows:

§ 1102.310 Serivce of process.

(a) Service. any subpoena or other legal process to obtain information maintained by the ASC shall be duly issued by a court having jurisdiction over the ASC, and served upon the Chairman; ASC; 2000 K Street, NW, Suite 310; Washington, DC 20006. Where the ASC is named as a party, service of process shall be made pursuant to the Federal Rules of Civil Procedure upon the Chairman at the above address. The Chairman shall immediately forward any subpoena, court order or legal process to the General Counsel. If consistent with the terms of the subpoena, court order or legal process, the ASC may require the payment of fees, in accordance with the fee schedule referred to in § 1102.306(e) prior to the release of any records requested pursuant to any subpoena or other legal process.

(b) Notification by person served. If any current or former member, officer, employee or agent of the ASC, or any other person who has custody of records belonging to the ASC, is served with a subpoena, court order, or other process requiring that person's attendance as a witness concerning any matter related to official duties, or the production of any exempt record of the ASC, such person shall promptly advise the Executive Director of such service, the testimony and records described in the subpoena, and all relevant facts that may assist the Executive Director, in consultation with the ASC General Counsel, in determining whether the individual in question should be authorized to testify or the records should be produced. Such person also should inform the court or tribunal that issued the process and the attorney for the party upon whose application the process was issued, if known, of the substance of this section.

(c) Appearance by person served. Absent the written authorization of the Executive Director or designee to disclose the requested information, any current or former member, officer, employee, or agent of the ASC, and any other person having custody of records of the ASC, who is required to respond to a subpoena or other legal process, shall attend at the time and place therein specified and respectfully decline to produce any such record or give any testimony with respect thereto, basing such refusal on this section.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Counsel.

Dated: October 22, 1999.

Ben Henson,

Executive Director.

[FR Doc. 99–28131 Filed 10–29–99; 8:45 am]

BILLING CODE 6201–01–M

Notices

Federal Register
Vol. 64, No. 210
Monday, November 1, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest, CO; Extension of Comment Period

AGENCY: Forest Service, USDA.

ACTION: Extension of the comment period for the Proposed Revised Land and Resource Management Plan for the White River National Forest and Draft Environmental Impact Statement.

SUMMARY: The comment period has been extended for the proposed revised Land and Resource Management Plan (Forest Plan), the Draft Environmental Impact Statement (DEIS), and associated documents. The original Notice of Availability was published in the **Federal Register**, Vol. 64, No. 151 on August 6, 1999 as FR Doc. 99–19922.

DATES: Public comment began on August 6, 1999, and will end February 9, 2000.

ADDRESSES: Interested parties are invited to send written comments regarding the proposed revised Forest Plan and Draft EIS to the address below: Forest Supervisor, Forest Plan Revision Comments, White River National Forest, P.O. Box 948, Glenwood Springs, CO 81602.

FOR FURTHER INFORMATION CONTACT: Questions about this action or requests for the documents listed above should be addressed to: Carolyn Upton, Team Leader, White River National Forest, P.O. Box 948, Glenwood Springs, CO 81602, Telephone Number: (970) 945–3226.

SUPPLEMENTARY INFORMATION: The public comment period was extended to February 9, 2000 to respond to requests from elected officials, organizations and individuals who have requested more time to review and comment upon the documents. The public comment extension will help ensure people have access to the planning documents and sufficient time to offer informed opinions.

Dated: October 18, 1999.

Martha Ketelle,

Forest Supervisor.

[FR Doc. 99–28461 Filed 10–29–99; 8:45 am]

BILLING CODE 3410–BW–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on November 18, 1999, at the Adam's Mark Hotel, 1200 Hampton Street, Columbia, South Carolina 29201. The purpose of the meeting is to meet with the State superintendent of schools or her representative to speak on the implementation of the South Carolina Education Accountability Act of 1998.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 25, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–28441 Filed 10–29–99; 8:45 am]

BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held November 17, 1999, 9:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control program and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, Bureau of Export Administration, 15th St. & Pennsylvania Ave., NW, Washington, DC 20230.

A Notice of Determination to close meetings, or portions of meetings, of the

PECSEA to the public on the basis of 5 U.S.C. 552(c)(1) was approved October 25, 1999, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: October 26, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–28523 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Workshop on Key Management Using Public Key Cryptography

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of Public Workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) announces a workshop to examine public key-based management techniques as specified in ANSI X9.42 (Agreement of Symmetric Keys Using Discrete Logarithm Cryptography), ANSI X9.44 (Key Establishment Using Factoring-Based Public Key Cryptography for the Financial Services Industry), and ANSI X9.63 (Public Key Cryptography for the Financial Services Industry: Key Agreement and Key Transport Using Elliptic Curve Cryptography). The purpose of the workshop is to review the many options and techniques contained in these standards and to discuss other related issues.

DATES: The Key Management Standard (KMS) Workshop will be held on Thursday, February 10 and Friday, February 11, 2000, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The KMS workshop will be held in the Administration Building (Bldg. 101), National Institute of Standards and Technology, Gaithersburg, Maryland. For planning purposes, advance registration is encouraged. To register, please fax your name, address, telephone, fax and e-mail address, telephone, fax and e-mail address to 301–948–1233 (Attn: KMS Workshop) by January 31, 2000. Registration questions should be addressed to Vickie Harris on 301–975–2920. Registration will also be available at the door, space permitting. The workshop will be open to the public and is free of charge.

FOR FURTHER INFORMATION: Further information may be obtained from the KMS web site at http://www.nist.gov/kms or by contacting Morris Dworkin, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930; telephone 301–975–2354; Fax 301–948–1233, or email Morris.Dworkin@nist.gov.

SUPPLEMENTARY INFORMATION: This work effort is being initiated pursuant to NIST's responsibilities under the computer Security Act of 1987, the Information Technology Management Reform Act of 1996, Executive Order 13011, and OMB Circular A–130.

The explosion in the use of electronic media to expedite commerce in recent years has led to the need for well-established schemes that can provide such services as data integrity and confidentiality. Symmetric encryption schemes such as Triple DES, as defined in FIPS 46–3, and the Advanced Encryption Standard (AES), which is currently under development, make an attractive choice for the provision of these services. Systems using symmetric techniques are efficient, and their security requirements are well understood. Furthermore, these schemes have been or will be standardized to facilitate interoperability between systems. However, the implementation of such schemes requires the establishment of a shared secret key in advance. As the size of a system or the number of entities using a system explodes, key establishment can lead to a key management problem. An attractive solution to this problem is to employ key establishment techniques that employ public key cryptography.

The Federal Government currently has no standard of keys for unclassified applications using a public key cryptographic methods. A number of techniques have been defined in voluntary consensus industry standards; however, the proliferation of techniques has lead to a concern that some techniques may not provide suitable security to meet the needs of the Federal Government and may not promote interoperability between agencies of the government. In anticipation of the development of a standard for key establishment, a **Federal Register** Notice was published by NIST on May 13, 1997, (Vol. 62, No. 92) requesting comments from the public concerning the development of such a standard, and concerning the availability, security, and adequacy of existing standards for public key-based key agreement and exchange. Comments were received recommending the use of RSA, Diffie-Hellman, MQV and elliptic curves, and several comments recommended the adoption of ANSI X9.42, X9.44 and X9.62.

This workshop will discuss the security and interoperability requirements of the Federal government, the options available in the above referenced voluntary consensus standards to address those needs, and the planned development of a Federal Information Processing Standard (FIPS) that will address those needs by including the appropriate techniques from the voluntary consensus standards referenced above. As with other FIPS, it is NIST's intention that the proposed standard would be published for public review and comment.

Dated: October 22 1999.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 99–28495 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldridge National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Monday, November 15, 1999, 9:00 a.m. to 5:30 p.m.; Tuesday, November 16, 1999, 8:00 a.m. to 5:30 p.m.; Wednesday, November 17, 1999, 8:00 a.m. to 5:30 p.m.; Thursday, November 18, 8:00 a.m. to 3:00 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the site visit process, review the final judging process and meeting procedures, and final judging of the 1999 applicants. The review process involves examination of records and discussions of applicant data, and will be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

DATES: The meeting will convene November 15, 1999 at 9:00 a.m. and

adjourn at 3:00 p.m. on November 18, 1999. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administrative Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 26, 1999, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: October 22, 1999.

Karen H. Brown.

Deputy Director.

[FR Doc. 99–28494 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990810211–9211–01]

RIN 0648–ZA69

National Sea Grant College Program—National Marine Fisheries Service Joint Graduate Fellowship Programs in Population Dynamics and Marine Resource Economics

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice is to announce that the National Sea Grant College Program Office (NSGO), in fulfilling its broad educational responsibilities and to strengthen its collaboration with the National Marine Fisheries Service (NMFS), and NMFS, in fulfilling its responsibilities to manage, conserve, and protect the Nation's living marine resources within the U.S. Exclusive Economic Zone and to provide the sound scientific information and analyses necessary for those purposes, have jointly established and are accepting applications for two new Graduate Fellowship Programs in (1) Population Dynamics and (2) Marine Resource Economics. Each program will provide grants to support two graduate students enrolled in relevant PhD degree programs in any university in the United States. Fellows would work on thesis problems of public interest and relevance and have summer internships under the guidance of a NMFS mentor at participating NMFS Science Centers, Laboratories, or Regional Offices. Applications must be submitted through one of the state Sea Grant Programs (see below).

DATES: Applications must be received by February 15, 2000 by a state Sea Grant Program.

ADDRESSES: Applications should be addressed to a state Sea Grant Program. Contact the appropriate state Sea Grant Program from the list below to obtain the mailing address.

FOR FURTHER INFORMATION CONTACT: Information can be obtained from Dr. Emory D. Anderson, Program Director for Fisheries, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910, tel: (301) 713–2435 ext. 144, e-mail: emory.anderson@noaa.gov; from any state Sea Grant Program (see below); or from any participating NMFS facility (see below).

Sea Grant Programs

University of Alaska, (907) 474–7086
University of California, (619) 534–4440
University of Connecticut, (860) 405–9128
University of Delaware, (302) 831–2841
University of Florida, (352) 392–5870
University of Georgia, (706) 542–6009
University of Hawaii, (808) 956–7031
University of Illinois, (765) 494–3593
Louisiana State University, (225) 388–6710
University of Maine, (207) 581–1436
University of Maryland, (301) 405–6209
Massachusetts Institute of Technology, (617) 253–7131
University of Michigan, (734) 763–1437
University of Minnesota, (218) 726–8106
Mississippi-Alabama Sea Grant Consortium, (228) 875–9341
University of New Hampshire, (603) 862–0122
New Jersey Marine Science Consortium, (732) 872–1300
State University of New York, (516) 632–6905
University of North Carolina, (919) 515–2454
Ohio State University, (614) 292–8949
Oregon State University, (541) 737–2714
University of Puerto Rico, (787) 832–3585
Purdue University, (765) 494–3593
University of Rhode Island, (401) 874–6800
South Carolina Sea Grant Consortium, (843) 727–2078
University of Southern California, (213) 740–1961
Texas A&M University, (409) 845–3854
Virginia Graduate Marine Science Consortium, (804) 924–5965
University of Washington, (206) 543–6600
University of Wisconsin, (608) 262–0905
Woods Hole Oceanographic Institution, (508) 289–2557

Participating NMFS Facilities (for Population Dynamics Program)

Alaska Fisheries Science Center
- Auke Bay Laboratory, Juneau, AK; Contact person: Phillip Rigby; Tel: (907) 789–6653; E-mail: phillip.rigby@noaa.gov
- National Marine Mammal Laboratory, Seattle, WA; Contact person: Douglas DeMaster; Tel: (206) 526–4047; E-mail: douglas.demaster@noaa.gov
- Resource Ecology and Fisheries Management Division, Seattle, WA; Contact person: Richard Marasco; Tel: (206) 526–4172; E-mail: rich.marasco@noaa.gov

Northwest Fisheries Science Center
- Montlake Laboratory, Seattle, WA; Contact person: Linda Jones; Tel: (206) 860–3200; E-mail: linda.jones@noaa.gov
- Mark O. Hatfield Marine Science Center, Newport, OR; Contact person: Linda Jones; Tel: (206) 860–3200; E-mail: linda.jones@noaa.gov

Northeast Fisheries Science Center
- Woods Hole Laboratory, Woods Hole, MA; Contact person: Fredric Serchuk; Tel: (508) 495–2245; E-mail: fred.serchuk@noaa.gov

Southeast Fisheries Science Center
- Miami Laboratory, Miami, FL; Contact person: Joseph Powers; Tel: (305) 361–4295; E-mail: joseph.powers@noaa.gov
- Beaufort Laboratory, Beaufort, NC; Contact person: Douglas Vaughan; Tel: (252) 728–8761; E-mail: doug.vaughan@noaa.gov

Southwest Fisheries Science Center
- La Jolla Laboratory, La Jolla, CA; Contact person: Russell Vetter; Tel: (619) 546–7125; E-mail: russ.vetter@noaa.gov
- Pacific Fisheries Environmental

Laboratory, Pacific Grove, CA; Contact person: George Boehlert; Tel: (831) 648–8447; E-mail: george.boehlert@noaa.gov

Honolulu Laboratory, Honolulu, HI; Contact person: Jerry Wetherall; Tel: (808) 983–5386; E-mail: jerry.wetherall@noaa.gov

Santa Cruz/Tiburon Laboratory, Tiburon, CA; Contact person: Churchill Grimes; Tel: (415) 435–3149; E-mail: churchill.grimes@noaa.gov

Participating NMFS Facilities (for Marine Resource Economics Program)

Northeast Fisheries Science Center

Woods Hole Laboratory, Woods Hole, MA; Contact person: Philip Logan; Tel: (508) 495–2354; E-mail: phil.logan@noaa.gov

Southeast Regional Office

St. Petersburg, FL; Contact person: Richard Raulerson; Tel: (727) 570–5335; E-mail: richard.raulerson@noaa.gov

Southwest Fisheries Science Center

La Jolla Laboratory, La Jolla, CA; Contact persons: Cindy Thomson; Tel: (831) 459–3068; E-mail: cthomson@cats.ucsc.edu; Samuel Herrick; Tel: (619) 546–7111; E-mail: sam.herrick@noaa.gov

Northwest Regional Office

Seattle, WA; Contact person: Steve Freese; Tel: (206) 526–6117; E-mail: steve.freese@noaa.gov

Alaska Fisheries Science Center

Resource Ecology and Fisheries Management Division, Seattle, WA; Contact person: Joseph Terry; Tel: (206) 526–4253; E-mail: joe.terry@noaa.gov

SUPPLEMENTARY INFORMATION:

National Sea Grant College Program—National Marine Fisheries Service Joint Graduate Fellowship Programs in Population Dynamics and Marine Resource Economics

I. Program Authority

Authority: 33 U.S.C. 1127. (Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.)

II. Introduction

The National Sea Grant College Program Office (NSGO) and the National Marine Fisheries Service (NMFS) have established a new Population Dynamics Fellowship Program and a new Marine Resource Economics Fellowship Program.

Beginning in the summer of 2000, each program will support two students interested in careers related to (1) the population dynamics of living marine resources and the development and implementation of quantitative methods for assessing their status, and (2) the economics of the conservation and management of living marine resources. Two additional students will be supported by each program in each subsequent year up to a maximum of six students per program at a given time.

The Population Dynamics Program will provide support for up to three years for two highly qualified graduate students working towards a PhD in population dynamics or related fields of study. The Marine Resource Economics Program will provide support for up to two years for two highly qualified graduate students working towards a PhD in marine resource economics, natural resource economics, or environmental economics. In addition to their major professor, Fellows are required to work closely with an expert (mentor) from NMFS who will provide data for their theses, serve on each Fellow's committee, and host an annual summer internship at the participating NMFS facility.

The goals of these fellowships are to (1) encourage qualified applicants to pursue careers in (a) population dynamics and stock assessment methodology or (b) marine resource economics; (2) increase available expertise related to (a) the population dynamics and assessment of stock status of living marine resources or (b) economic analysis of living marine resource conservation and management decisions; (3) foster closer relationships between academic scientists and NMFS; and (4) provide real-world experience to graduate students and accelerate their career development.

III. Eligibility

Any student may apply who is a United States citizen or lawfully admitted to the United States for permanent residence. At the time of application, prospective Population Dynamics Fellows must be admitted to a PhD degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology at a university in the United States, and prospective Marine Resource Economics Fellows must be in the process of completing at least two years of course work in a PhD degree program in natural resource economics or a related field at a university in the United States.

IV. Application

An application must be received by February 15, 2000 by the director of the state Sea Grant program nearest to the university in which the student is enrolled. The state Sea Grant director then forwards the application to the NSGO. Applicants are strongly encouraged to contact participating NMFS facilities before submitting their application. Each application must include: (1) Complete curriculum vitae from both student and major professor; (2) an education and career goal statement from the applicant with emphasis on the applicant's interest in (a) marine population dynamics or the development and implementation of quantitative methods for assessing stock status of living marine resources, or (b) in marine resource economics (not to exceed two pages); (3) three letters of recommendation, with at least one from the student's major professor (a summary of the proposed thesis may be included if available); (4) official copies of all undergraduate and graduate student transcripts; and (5) (only for the Population Dynamics Program) proof of application, acceptance, and enrollment in the case of students entering graduate school (i.e., who have not yet completed one semester of graduate work) if they are selected for a fellowship.

Each application must be accompanied by a written matching commitment, equal to half of the NSGO amount (see below), from the university to support the budget for the period of the award. Allocation of matching funds must be specified in the budget. In addition to stipend and tuition for the applicant, the budget should include funds for equipment, supplies, and travel necessary to carry out the proposed thesis research. Funds should also be allocated for one trip per year to the NOAA offices in Silver Spring, MD, for a meeting of all Fellows, mentors, and NSGO/NMFS Fellowship Program Managers.

V. Award

The award for each fellowship will be in the form of a grant of $38,000 per year, 50% ($19,000) of which will be contributed by NMFS, 33⅓% ($12,667) by the NSGO, and 16⅔% ($6,333) by the university as the required 50% match of NSGO funds. The portion of the award provided to each Fellow for salary (stipend), living expenses (per diem), tuition, and travel necessary to carry out the proposed thesis research and to attend the annual Fellows meeting in Silver Spring, MD, will be determined and distributed by the state Sea Grant program/university in accordance with its guidelines. Indirect costs are not allowable for either the fellowship or for any costs associated with the fellowship, according to 15 CFR 917.11(e), Guidelines for Sea Grant Fellowships.

VI. Selection Criteria

Selection criteria will include (1) academic ability (25%), (2) demonstrated research ability and interest in the field (25%), (3) diversity and appropriateness of academic background (particularly quantitative skills in the case of the Population Dynamics Program) (25%), (4) additional qualifying experience such as work (15%), (5) expertise of major professor (5%), and (6) ability to work well with others (5%).

VII. Selection

Selection is competitive. A selection team for each program consisting of experts in that discipline and representatives from the NSGO and NMFS will evaluate and rank the candidates using the above criteria. Two Fellows will be selected for each program by the NSGO/NMFS Fellowship Program Managers based in part on rankings provided by the selection teams. In addition, Program Managers will base the selections on: (a) ascertaining which candidates best meet the program goals and whose proposed work will not substantially duplicate other projects currently funded or approved for funding by NOAA, and (b) ensuring that an appropriate NMFS mentor is available to work with the candidate. Accordingly, awards may not necessarily be made to the two highest-scoring candidates in each program.

VIII. Timetable

Applications must be received by February 15, 2000, by the state Sea Grant Program, and must be received by February 21, 2000, by the NSGO. Successful Fellows may expect to be notified by April 1, 2000. Fellowships, when initially awarded, will commence on or about June 1, 2000, pending completion of the Fellow's spring semester.

IX. Participating NMFS Facilities

Mentors will be from participating NMFS Science Centers, Laboratories, or Regional Offices. Each Fellow will be required to work as a summer intern at the participating NMFS facility either on his/her thesis or on appropriate related problems. Remuneration for the summer internship will be part of the annual award. Population Dynamics Fellows will also be expected to spend 10–20 days at sea per year learning about sampling techniques and problems, commercial fishing, fishery biology, and local and regional issues of importance to fisheries management. Fellows may also work, as necessary, at the participating NMFS facility during some or all of the academic year at the mutual discretion of mentor, major professor, and Fellow. After selection, but before the fellowship is awarded, each Fellow will be required to provide a one-page description of his/her assignment based on discussions among mentor, major professor, and Fellow. These discussions will be facilitated by the NSGO/NMFS Fellowship Program Managers and will be completed by April 30, 2000. The assignment description will reflect a clear mutual understanding of the substantive dimensions of the project and its expected results.

X. Reporting Requirements

Fellows will, for each year of their fellowship, provide a written annual summary of their accomplishments and activities during the preceding year to the NSGO/NMFS Fellowship Program Managers. This summary is due no later than one month following the anniversary of the start of the fellowship. Fellows will be expected to present a review of their research during the annual Fellows meeting in Silver Spring, MD.

XI. Other Requirements

(A) Federal Policies and Procedures—Recipients and sub-recipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Pre-Award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(D) No Obligation for Future Funding—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying", and the following explanations are hereby provided:

(1) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(2) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities", as required under 15 CFR part 28, appendix B.

(H) Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL,

"Disclosure of Lobbying Activities". Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

(I) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(J) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs".

(K) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(L) Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains a collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant Budget Form has been approved under control number 0648–0362 with an average response estimated to take 15 minutes. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on this estimate or any other aspect of this collection to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Dated: October 27, 1999.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

Dated: October 27, 1999.

Lamarr B. Trott,

Deputy Director, Office of Science and Technology, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 99–28572 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990927267–9267–01]

RIN 0648–ZA71

National Fisheries Habitat Program: Request for Proposals for FY 2000

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is entertaining preliminary proposals and subsequently full proposals for innovative research, education, and outreach projects that address critical and high priority problems related to Fisheries Habitat in U.S. coastal and Great Lakes waters. Preference will be given to proposals that involve collaboration with multiple investigators and various Federal agencies and focus on regional and national issues with broad application. Proposals with narrow focus from single investigators are not encouraged and will have a minimal likelihood of being funded. In FY 2000 and 2001, Sea Grant expects to make available about $1,500,000 per year to support such projects. Proposals may request up to $300,000 per year for a maximum of two years, and each proposal must include additional matching funds equivalent to at least 50% of the Federal funds requested. Successful projects will be selected through national competitions.

DATES: Preliminary proposals must be received before 5 pm (local time) on December 1, 1999 by the nearest state Sea Grant College Program or the National Sea Grant Office (NSGO). After evaluation at the NSGO, some proposers will be encouraged to prepare full proposals, which must be received before 5 pm (local time) on February 15, 2000 by the nearest state Sea Grant College Program or the NSGO.

ADDRESSES: Preliminary proposals and full proposals must be submitted through the nearest state Sea Grant Program. The addresses of the Sea Grant College Program directors may be found at the following Internet website: (http://www.nsgo.seagrant.org/SGDirectors.html) or may be obtained by contacting the Program Manager at the NSGO (see below). Investigators from non-Sea Grant states may submit their preliminary proposals and proposals directly to the National Sea Grant Office at: National Sea Grant College Program, R/SG, Attn: Mrs. Geraldine Taylor, Fisheries Habitat Competition, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Emory D. Anderson, Program Director for Fisheries, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–2435 ext. 144, facsimile (301) 713-0799, e-mail: (emory.anderson@noaa.gov).

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 1121–1131. (Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.)

II. Program Description

Background

Human and non-anthropogenic activities threaten the environments of our marine and Great Lakes waters. Habitats important to stocks of finfish and shellfish species exist in riverine, estuarine, coastal, and offshore continental shelf waters within the U.S. Exclusive Economic Zone as well as in waters of the Great Lakes. A long-term threat to the viability of commercial and recreational fisheries is the continuing adverse impacts of various human activities and natural hazards on our marine and Great Lakes aquatic habitats.

The U.S. Congress, in re-authorizing the Magnuson-Stevens Fishery Conservation and Management Act through the Sustainable Fisheries Act (SFA) (16 U.S.C. 1801 *et seq.*) in October 1996, mandated the identification of habitats essential to Federally managed marine finfish and shellfish species and the identification of measures to conserve and enhance these habitats. The SFA defined essential fish habitat (EFH) as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." This has been further interpreted by NOAA to include aquatic areas and their associated physical, chemical, and biological properties needed to support sustainable fisheries and healthy ecosystems involving managed species.

Since Congressional intent in the SFA was to prevent further loss of marine, estuarine, and other aquatic habitats, the eight regional Fishery Management Councils (Councils) have had to amend their fishery management plans (FMPs) to describe and identify EFH for all life stages of managed species, provide information on fishing and non-fishing activities that may adversely impact EFH, recommend measures to conserve and enhance EFH, and minimize, to the extent practicable, adverse impacts on EFH caused by fishing activities. The SFA also requires consultations between the National Marine Fisheries Service (NMFS) and any Federal agency whose actions may adversely affect EFH.

Although the EFH mandate in the SFA was directed towards the conservation and management of habitat for Federally managed fisheries, it has served to heighten awareness and stimulate similar efforts by state resource agencies and interstate Marine Fisheries Commissions responsible for near-shore and estuarine waters and by state, Federal, and international bodies responsible for Great Lakes waters.

Huge gaps in knowledge exist regarding habitat preferences and requirements of the life stages of many finfish and shellfish species, the role played by various habitats in the fishery production process, and the impacts of various anthropogenic and natural activities on habitat structure and function. In order for Fishery Management Councils, NMFS, interstate Marine Fisheries Commissions, and other Federal and state regulatory bodies and agencies responsible for either marine or Great Lakes waters to adequately manage habitats, these gaps in knowledge must be filled through expanded research and extension efforts.

The importance of addressing the requirement for and present deficiency in knowledge regarding fisheries habitat, and the need to consider habitat to a greater extent in fisheries management, has recently received considerable national attention in scientific symposia and conferences and popular and peer-reviewed publications. This new research initiative will help to address the lack in knowledge.

Funding Availability and Priorities

The National Sea Grant College Program encourages proposals that address the topical fisheries habitat issues listed below. Proposals are particularly encouraged that: (1) Involve collaboration with multiple investigators and various Federal agencies (e.g., National Marine Fisheries Service, National Undersea Research Program, Environmental Research Laboratories, National Ocean Service, U.S. Geological Survey, Environmental Protection Agency) in which the cooperating agencies provide additional funding, personnel, specialized equipment, research vessel time, and the like; (2) Address regional or national issues with broad application; (3) Demonstrate local and regional resource manager and stakeholder involvement in the planning and development process; (4) provide results in digital, metadata, GIS-capable format; and (5) incorporate applied areas of education, outreach, socioeconomic, and management components and applications of direct benefit to stakeholders. Proposals with narrow focus from single investigators are not encouraged and will have a minimal likelihood of being funded.

Proposals are requested that address the following issues, which are not listed in any implied order of priority:

(1) Identification, quantification, synthesis of existing information, and understanding of the linkage between fisheries and their habitats: completion of life history inventories of managed species (e.g., distribution and abundance of egg, larval, and juvenile stages); habitat factors (*e.g.*, temperature, salinity, flow regimes, currents, turbidity, habitat structure, habitat location or quality, prey abundance) influencing distribution, abundance, growth, species interactions, and survival for prediction of fisheries abundance trends and yields; development of conceptual ecosystem models and their functional attributes incorporating habitat; establish and quantify linkages between habitat and fisheries production.

(2) The effects of anthropogenic activities on habitat of managed fisheries: fishing (*e.g.*, gear-specific, spatial and geographic extent, mapping of fishing and non-fishing areas, intensity and frequency gradients, seasonality, differential habitat types, recovery rates following disturbance by gear, predictive models linking impacts with species population dynamics, gear design to minimize impacts); aquaculture and stock enhancement (*e.g.*, physical, nutrient, contaminant, genetic, and disease impacts); point and non-point source pollution; coastal and urban development (*e.g.*, land-use practices, water flow diversion, buffer zones, loss or alteration of habitat).

(3) Impacts of natural hazards on fisheries habitat: relative scales of natural variability; global climate variation; storm activity, flooding, drought, and erosion.

(4) Restoration of habitat: artificial reefs; estuarine dredging; salt marsh ecology; marine reserves; area management strategies (*e.g.*, open and closed areas for commercial fisheries, rotational systems); wetland rehabilitation; shoreline and streambank stabilization; spawning habitat rehabilitation (*e.g.*, anadromous finfish species).

About $1,500,000 is available from the National Sea Grant College Program to support these projects in FY 2000; an additional $1,500,000 may be available in FY 2001 depending on the overall funding appropriation for the National Sea Grant College Program. Project activities should include identified milestones for each project year, and the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress. Proposals may request up to $300,000 per year for a maximum of two years, and each proposal must include additional matching funds equivalent to at least 50% of the Federal funds requested; for example, a proposal requesting a total of $300,000 in Federal support for two years would have to include at least an

additional $150,000 in matching funds. Proposals involving collaboration with any non-Sea Grant Federal agency or agencies must include documentation and verification of the nature and value of the support being provided by such agency or agencies. Any additional funding contributed by collaborating agencies could be provided either to the participating investigators from such agencies or directly to the participating university investigators. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

III. Eligibility

The National Sea Grant College Program is a network of 29 university-based programs in coastal and Great Lake states involving more than 300 institutions nationwide in research, outreach, and education. Applications may be submitted by individuals associated with these institutions and also by individuals, public or private corporations, partnerships, or other associations or entities (including non-Sea Grant institutions of higher education, institutes, or non-Federal laboratories), or any State, political subdivision of a State, or agency or officer thereof. Applications by individuals not affiliated with Sea Grant institutions should preferably be collaborative efforts with Sea Grant university investigators.

Awards will be in the form of grants or cooperative agreements, the latter being the case if the project involves substantial involvement by investigators from a partnering Federal agency. Awards to successful applicants from Sea Grant institutions will be issued through the local Sea Grant Programs. Awards to successful applicants from institutions from non-Sea Grant states will be issued through the National Sea Grant Office.

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under the Fisheries Habitat Program are as follows:

(1) Impact of Proposed Project (55%): Significance of the problem addressed or the effect this activity will have on improving the understanding and management of fisheries habitats; and the degree to which potential users of the results of the proposed activity have been involved in planning the activity and/or will be involved in the execution of the activity.

(2) Scientific or Professional Merit (35%): Degree to which the activity will advance the state of the science or discipline through synthesis of existing information and use or extension of state-of-the-art methods, employ new approaches to solving problems and exploiting opportunities in resource management or development or in public outreach, focus on new types of important or potentially important resources and issues, be executed by investigators qualified by education, training, and/or experience; and record of achievement with previous funding.

(3) Collaboration (10%): Degree to which multiple investigators and other non-Sea Grant Federal agencies are involved in the activity.

V. Selection Procedures

Preliminary proposals must be submitted in order to be eligible to submit a full proposal. Preliminary proposals will be reviewed at the NSGO by a panel composed of government, academic, and industry experts according to the evaluation criteria listed above. The panel will make individual recommendations to the Director of the NSGO regarding which preliminary proposals may be suitable for further consideration. On the basis of the panel's recommendations, the Director of the NSGO will advise proposers whether or not the submission of full proposals is encouraged. Invitation to submit a full proposal does not constitute an indication that the proposal will be funded. Interested parties who are not invited to submit full proposals will not be precluded from submitting full proposals if they have submitted a preliminary proposal in accordance with the procedures described below.

Full proposals will be received at the individual state Sea Grant Programs (or at the National Sea Grant Office, if from a non-Sea Grant state) and sent to peer reviewers for written reviews which will be based on the evaluation criteria listed above. The National Sea Grant Office will obtain the written reviews for proposals from non-Sea Grant states. Complete full proposals and their written reviews will be sent by the state Sea Grant programs to the National Sea Grant Office to be ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer review panel consisting of government, academic, and industry experts. The panel members will provide individual evaluations on each proposal, but there will be no consensus advice. The National Sea Grant Office will consider their recommendations and evaluations in the final selection. Only those proposals rated by the panel as either Excellent, Very Good, or Good are eligible for funding. For those proposals, the National Sea Grant Office will: (a) Ascertain which proposals best meet the program priorities, giving consideration to geographical distribution and representation, and do not substantially duplicate other projects that are currently funded or are approved for funding by NOAA and other Federal agencies; hence, awards may not necessarily be made to the highest-scored proposals; (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. A summary statement of the scientific review by the peer panel will be provided to each applicant.

VI. Instructions for Application

Timetable

December 1, 1999, 5 pm (local time)—Preliminary proposals due at state Sea Grant Programs or at NSGO for proposals from non-Sea Grant states.

December 6, 1999, 5 pm EST—Preliminary proposals submitted to state Sea Grant Programs should be transmitted by those Programs to the NSGO so as to be received by the NSGO on this date.

February 15, 2000, 5 pm (local time)—Full proposals due at state Sea Grant Programs or at NSGO for proposals from non-Sea Grant states.

February 21, 2000, 5 pm EST—Full proposals submitted to state Sea Grant Programs should be transmitted by those Programs to the NSGO so as to be received by the NSGO on this date.

March 29, 2000, 5 pm EST—Reviewed full proposals due at NSGO.

July 1, 2000 (approximate)—Funds awarded to selected recipients; projects begin.

General Guidelines

The ideal proposal attacks a well-defined problem that will be or is a significant societal issue. The organization or people whose task it

will be to make related decisions, or who will be able to make specific use of the projects results, will have been identified and contacted by the Principal Investigator(s). The project will show an understanding of what constitutes necessary and sufficient information for responsible decision-making or for applied use, and will show how that information will be provided by the proposed activity, or in concert with other planned activities.

Research projects are expected to have: a rigorous, hypothesis-based scientific work plan, or a well-defined, logical approach to address an engineering problem; a strong rationale for the proposed research; and a clear and established relationship with the ultimate users of the information. Research undertaken jointly with industry, business, multiple investigators, or other agencies with interest in the problem will be seen as being meritorious. Their contribution to the research may be in the form of collaboration, in-kind services, or dollar support. Projects with narrow focus from single investigators are not encouraged and will have a minimal likelihood of being funded. Projects that are solely monitoring efforts are not appropriate for funding.

Proposals which incorporate educational, outreach, socioeconomic, and management components and applications will be seen as being meritorious.

What to Submit

Preliminary Proposal Guidelines

To prevent the expenditure of effort that may not be successful, proposers must first submit preliminary proposals. Preliminary proposals must be single-or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8.5″ × 11″ paper. The following information should be included:

(1) Signed Title Page: The title page should be signed by the Principal Investigator and should clearly identify the program area being addressed by starting the project title with "Fisheries Habitat". Principal Investigators and collaborators should be identified by affiliation and contact information. The total amount of Federal funds and matching funds being requested should be listed for each budget period, as well as the source of the matching funds; the total should include all subrecipient's budgets on projects involving multiple institutions. Preliminary proposals must include matching funds equivalent to at least 50% of the Federal funds requested.

(2) A concise (2-page limit) description of the project, its expected output or products, the anticipated users of the information, and its anticipated impact. Proposers may wish to use the Evaluation Criteria for additional guidance in preparing the preliminary proposals.

(3) Resumes (1-page limit) of the Principal Investigators.

(4) Proposers are encouraged (but not required) to include a separate page suggesting reviewers that the proposers believe are especially well qualified to review the proposal. Proposers may also designate persons they would prefer not review the proposal, indicating why. These suggestions will be considered during the review process.

Full Proposal Guidelines

Each full proposal should include the first six items listed below; the standard forms indicated under Item 7 will only be required for proposals selected for funding. All pages should be single or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8.5″ × 11″ paper. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs, and other pictorial presentations are included in the 15-page limitation; literature citations and support letters, if any, are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(1) Signed Title Page: The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title "Fisheries Habitat". The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each budget period; the total should include all subrecipient's budgets on projects involving multiple institutions.

(2) Project Summary: This information is very important. Prior to attending the peer review panel meetings, some of the panelists may read only the project summary. Therefore, it is critical that the project summary accurately describes the research being proposed and conveys all essential elements of the research. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: 1. Title: Use the exact title as it appears in the rest of the application. 2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator. 3. Funding request for each year of the project, including matching funds if appropriate. 4. Project Period: Start and completion dates. Proposals should request a start date of July 1, 2000, or later. 5. Project Summary: This should include the rationale for the project, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of work to be completed.

(3) Project Description (15-page limit):

(a) Introduction/Background/Justification: Subjects that the investigator(s) may wish to include in this section are: (i) Current state of knowledge; (ii) Contributions that the study will make to the particular discipline or subject area; and (iii) Contributions the study will make toward addressing the problem of fisheries habitat.

(b) Research or Technical Plan: (i) Objectives to be achieved, hypotheses to be tested; (ii) Plan of work—discuss how stated project objectives will be achieved; and (iii) Role of project personnel.

(c) Output: Describe the project outputs that will enhance the Nation's ability to understand and manage fisheries habitat.

(d) Coordination with other Program Elements: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

(e) Literature Cited: Should be included here, but does not count against the 15-page limit.

(4) Budget and Budget Justification: There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may use their own form as long as it provides the same information as the Sea Grant form. Successful applicants whose awards would be made through a state Sea Grant Program must consult with that state Sea Grant Program budget office to ensure that all necessary

overhead costs are included. Subcontracts should have a separate budget page. Matching funds must be indicated if required; failure to provide adequate matching funds will result in the proposal being rejected without review. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested. For all applications, regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) the Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

(5) Current and Pending Support: Applicants must provide information on all current and pending support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. All current project support from whatever source (*e.g.,* Federal, State, or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the principal investigator and other senior personnel should be included, even if they receive no Federal salary support from the project(s). The number of person-months per year to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within NOAA.

(6) Vitae (2 pages maximum per investigator).

(7) Standard Application Forms: Applicants may obtain all required application forms at the following Internet website: (http://www.nsgo.seagrant.org/research/rfp/index.html#3), from the state Sea Grant Programs, or from Dr. Emory D. Anderson at the National Sea Grant Office (phone: 301–713–2435 x144 or e-mail: emory.anderson@noaa.gov). For proposals selected for funding, the following forms must also be submitted:

(a) Standard Forms 424, Application for Federal Assistance, and 424B, Assurances—Non-Construction Programs, (Rev 4–88). Applications should clearly identify the program area being addressed by starting the project title with "Fisheries Habitat". Please note that both the Principal Investigator and an administrative contact should be identified in section 5 of the SF–424. For section 10, applicants should enter "11.417" for the CFDA Number and Sea Grant Support for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying", and the following explanations are hereby provided:

(i) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities", as required under 15 CFR Part 28, Appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, S–LLL, "Disclosure of Lobbying Activities". Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

VII. How To Submit

Preliminary proposals and proposals must be submitted to the state Sea Grant Programs or, for investigators in non-Sea Grant states, directly to the National Sea Grant Office (NSGO), according to the schedule outlined above. Although investigators are not required to submit more than 3 copies of either pre-proposals or full proposals, the normal review process requires 10 copies. Investigators are encouraged to submit sufficient copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5" × 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. The addresses of the Sea Grant College Program directors may be found at the following Internet website: (http://www.nsgo.seagrant.org/SGDirectors.html) or may be obtained by contacting the Program Manager, Dr. Emory D. Anderson, at the National Sea Grant Office (phone: 301–713–2435 x144 or e-mail: emory.anderson@noaa.gov). Pre-proposals and proposals sent to the National Sea Grant Office should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Fisheries Habitat Competition, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (phone number for express mail applications is 301–713–2445).

Applications received after the December 1, 1999 and February 15, 2000 deadlines and applications that deviate from the format described above will be returned to the sender without review. Facsimile transmissions and electronic mail submission of preliminary and full proposals will not be accepted.

VIII. Other Requirements

(A) Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Pre-Award Activities—If applicants incur any costs prior to an award being made, they do so solely at

their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(D) No Obligation for Future Funding—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(H) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs".

(I) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(J) Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

(K) For awards receiving funding for the collection or production of geospatial data (*e.g.*, GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906 "Coordinating Geographic Data Acquisition and Access" The National Spatial Data Infrastructure", 59 Fed. Reg. 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: (http://www.fgdc.gov/standards/standards/html).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant Budget Form (90–4), Sea Grant Project Summary Form (90–2), and Standard Forms 424 and 424B have been approved under control numbers 0648–0362, 0648–0362, 0348–0043, and 0348–0040, respectively, with average responses estimated to take 15, 20, 45, and 15 minutes, respectively. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these estimates or any other aspect of these collections to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Dated: October 27, 1999.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 99–28573 Filed 10–29–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 991027290–9290–01]

RIN 0648–ZA74

Application of Marine Biotechnology to Assess the Health of Coastal Ecosystems: Request for Proposals for FY 2000

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is entertaining preliminary proposals and subsequently full proposals for innovative research, education and outreach projects that develop and utilize molecular and cellular biology and its applications to assess the levels and effects of contaminants, and pathogens on the health of the coastal ecosystem. In FY 2000 and 2001, Sea Grant expects to make available about $1,500,000 per year to support projects which utilize marine biotechnology (molecular or cellular biology) to address environmental issues effecting the coast. Proposals may request up to $300,000 per year for a maximum of two years, and each proposals must include additional matching funds equivalent to at least 50% of the Federal funds requested.

DATES: Preliminary proposals must be received before 5 p.m. (local time) on December 1, 1999 by the nearest state Sea Grant College Program or the National Sea Grant Office (NSGO). After evaluation at the NSGO, some proposers will be encouraged to prepare full proposals, which must be received

before 5 p.m. (local time) on February 15, 2000 at the nearest state Sea Grant College Program or NSGO.

ADDRESSES: Preliminary proposals and full proposals must be submitted through the nearest state Sea Grant Program. The addresses of the Sea Grant College Program directors may be found on Sea Grant's home page (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting the Program Manager at the NSGO (see below). Investigators from non-Sea Grant states may submit their preliminary proposals and proposals directly to the NSGO at: National Sea Grant College Program, R/SG, ATTN: Mrs. Geri Taylor, Environmental Marine Biotechnology, Room 11841, NOAA, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Linda E. Kupfer, Biotechnology Program Manager, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910, or Mary Robinson, Secretary, NSGO, 301–713–2435; facsimile 301–713–0799; e-mail: linda.kupfer@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 1121–1131. Catalog of Federal Assistance Number: 11.417, Sea Grant Support.

II. Program Description

Background

Preservation of coastal ecosystems is critically important to the American public. There are growing concerns with the status and health of vital marine resources. Increasing development of coastal areas and pollution from variety of sources now exert relentless pressure upon these environments. Recognition that widespread threats to coastal ecosystems impact human health as well as traditional and emerging economic interests resonates throughout the scientific and management communities. The National Research Council's Ocean Studies Board recently reported in "Challenges on the Horizon," that improving the health of the coastal oceans and sustaining ocean ecology in the face of mounting anthropogenic impacts represent key challenges for ocean research. Realization of the close link between the oceans and human health has sparked interest and involvement from scientists, health care professional and other stakeholders as cited in the Ocean Studies Board's report, "From Monsoons to Microbes."

There are numerous chemical and biological threats to the health of the marine environment, which can effect its potential to sustain essential biodiversity, its ability to fuel valuable economic interests and its effect on human health. These range from severe impacts of point-source contamination and diseases to far more subtle stress imposed by sublethal and non-point source contamination exposure over long time frames. Development of coastal areas and the associated changes in land use patterns apply additional impacts to the coastal ecosystem. The response of the biota to the cumulative stress is now evident in a variety of compelling ways. Specific examples of the widespread nature and ramifications of environmental stress in the coastal environment include:

(1) 75% of U.S. commercial fisheries are dependent upon estuaries at some point in their life cycle; however, it is estimated that 40% of estuarine and coastal waters are unfit for swimming or fishing due to excess nutrients, wastewater discharge, viruses and bacteria.

(2) Chemicals of anthropogenic origin have been found in coastal waters throughout the United States. In many areas, contaminants such as metals (cadmium, copper and mercury) and organic chemicals (PCBs, PAHs, pesticides) are found in sufficient concentrations to pose major concerns to managers.

(3) Human diseases are increasing in part due to anthropogenic causes such as sewage disposal and farming practices.

(4) It is estimated that currently 60% of the world population lives in the coastal zones. This is expected to increase significantly in the next decade.

While these problems have continued to mount, our understanding of the concurrent biological and ecological ramifications have not followed in step. Consequently, we are poorly equipped to evaluate these problems and to adequately suggest and implement remedies. Historically, a number of factors have prevented this. We are using for the most part the tools of early twentieth century biology when better ones are available. Techniques with sufficient resolution to discern the mechanisms underlying these problems have rarely been applied within the context of the health of the marine environment. In addition, the highly interdisciplinary nature of these problems have been difficult to support by traditional funding paths. Also there is a significant lack of understanding in the public domain regarding biotechnology and its applications in the marine environment. An accelerated program of biotechnology education, communication and outreach is critical to public acceptance and trust in the use of marine biotechnology tools.

Overcoming these barriers is the emphasis of this Request for Proposal (RFP). This RFP is meant to support the application of innovative, state of the art molecular and cellular biotechnology research, education and outreach, including interdisciplinary efforts, designed specifically to address tractable problems pertaining to the health of the marine ecosystem.

The same innovative technology that has yielded such profound changes in the way that biomedical research is conducted and has become commonplace in virtually all modern biology laboratories will be applied in the critical area of environmental research. Techniques utilized in a typical molecular and cellular biology laboratory can now be viewed as an accessible biological toolbox that enables researchers to answer insightful questions relating to stress detection and monitoring methodologies. Marine biotechnology has become a mature and powerful driving force that is poised to lead to new developments in our understanding of how marine organisms and the coastal ecosystems respond to pollution, disease and environmental stress.

This RFP builds upon the success of the first two marine biotechnology initiatives funded by Sea Grant. These programs were instrumental in focusing university molecular and cellular biology research on marine issues. The benefits of previously funded research in marine biotechnology include new natural products, new pharmaceuticals, and new tools for fisheries management as well as development of new research systems for fundamental research and new insights into ocean dynamics. This RFP will focus the considerable power of molecular and cellular biology on the marine area, an area of strategic importance that to date has been poorly represented despite its great national importance.

Funding Availability and Priorities

This RFP will fund a nationwide research, education and outreach program that is designed to foster innovative approaches to the study of health of the marine environment. It is designed to encourage collaboration among academics and key resource decision makers to insure that results are distributed in an appropriate fashion among a variety of key user groups ranging from the research and

management communities to the general public.

The focus of the research conducted in this initiative addresses a topic of pressing national importance to better understand the marine ecosystem and the impact of contaminants and pathogens on this system. The overarching goal is to add new focus and direction to Sea Grant funded research and to enhance its impact through innovative research studies, interdisciplinary studies, educational programs and outreach efforts. Research proposals should focus on tractable problems and specific, identifiable outcomes which impact the problem. An advisory board of noted scientists, managers and industry representatives was convened to help refine the focus of this RFP.

Research areas may include the application of cellular and molecular biological techniques for the:

(1) Detection and Characterization of Pollutants and Disease on the coastal ecosystem.

(a) Development of novel biosensors (including in situ biosensors) for major groups of pollutants and contaminants (toxics; heavy metals such as cadmium, copper and mercury; organics such as PCBs, PAHs, and pesticides; and endocrine disrupters).

(b) Detection and characterization of sublethal effects of pollutants, contaminants, and pathogens (excluding effects of harmful algal blooms) in ecologically and economically important stocks in the natural environment (excluding aquacultured animals and oysters as these are covered under other competitions).

(c) Identification and detection of biomarkers for the purpose of health and environmental quality assessment.

II. Education and Outreach

(1) Public outreach, extension and educational support for understanding and applying marine biotechnology concepts and tools as they relate to sustaining the health of the marine environment through an informed citizenry.

(2) Interdisciplinary workshops and meetings linking marine biotechnology science with scientists, managers, industry representatives and other stakeholders.

About $1,500,000 is available from the National Sea Grant College Program to support these projects in FY2000; an additional $1,500,000 may be available in FY 2001 depending on the overall funding appropriation for the National Sea Grant College Program. Researchers are encouraged to include outreach in their proposals as appropriate. Project activities should include identified milestones for each project year, and the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress. Projects may request up to $150,000 per year for a maximum of two years and each proposal must include additional matching funds equivalent to at least 50% of the Federal funds requested; for example, a proposal requesting a total of $200,000 in Federal support for two years would have to include at least an additional $100,000 in matching funds. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of: (a) the Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

III. Eligibility

The National Sea Grant College Program is a network of 29 university-based programs in coastal and Great Lake states involving more than 300 institutions nationwide in research, outreach, and education. Applications may be submitted by individuals associated with these institutions and also by individuals, public or private corporations, partnerships, or other associations or entities (including non-Sea Grant institutions of higher education, institutes, or non-Federal laboratories), or any State, political subdivision of a State, or agency or officer thereof. Applications by individuals not affiliated with Sea Grant institutions should preferably be collaborative efforts with Sea Grant university investigators.

Awards to successful applicants from Sea Grant institutions will be issued through the local Sea Grant Programs. Awards to successful applicants from institutions from non-Sea Grant states will be issued through the NSGO.

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under the "Application of Marine Biotechnology to Assess the Health of the Coastal Ecosystems" are as follows:

(1) Impact of Proposed Project (50%): Significance of the problem addressed or the effect and impact the proposal will have on understanding or solving this problem and supporting the health of the coastal environment; or the need for this activity as a necessary step for the assessment and understanding of the health of the coastal ecosystem; and the degree to which potential users of the results of the proposed activity have been involved in planning the activity and will be involved in the execution of the activity as appropriate.

(2) Scientific or Professional Merit (50%): Degree to which the activity will advance the state of the science or discipline through synthesis of existing information and use and extension of cutting edge as well as state-of-the-art methods; degree to which new approaches to solving problems and exploiting opportunities in resource management or development, or in public outreach on such issues will be employed; degree to which the activity will focus on new types of important or potentially important resources and issues; degree to which investigators are qualified by education, training and/or experience to execute the proposed activity; and record of achievement with previous funding.

V. Selection Procedures

Preliminary proposals must be submitted in order to be eligible to submit a full proposal. Preliminary proposals will be reviewed at the NSGO by a panel composed of government, academic, and industry experts according to the evaluation criteria listed above. The panel will make individual recommendations to the Director of the NSGO regarding which preliminary proposals may be suitable for further consideration. On the basis of the panel's recommendations, the Director of the NSGO will advise proposers whether or not the submission of full proposals is encouraged. Invitation to submit a full proposal does not constitute an indication that the proposal will be funded. Interested parties who are not invited to submit full proposals will not be precluded from submitting full proposals if they have submitted a preliminary proposal in accordance with the procedures described below.

Full proposals will be received at the individual state Sea Grant Programs (or at the NSGO, if from a non-Sea Grant state) and sent to peer reviewers for written reviews which will be based on the evaluation criteria listed above. The NSGO will obtain the written reviews for proposals from non-Sea Grant states. Complete full proposals and their written reviews will be sent by the state Sea Grant programs to the NSGO to be ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer review panel

consisting of government, academic, and industry experts. Panel members will provide individual evaluations on each proposal, but there will be no consensus advice. The NSGO will consider their recommendations and evaluations in the final selection. Only those proposal rated by the panel as either Excellent, Very Good or Good are eligible for funding. For those proposals, the NSGO will: (a) Ascertain which proposals best meet the program priorities, as described in Section II under Funding Availability and Priorities, giving consideration to geographic distribution and representation, maintaining a balanced program of research, and not substantially duplicating other projects that are currently funded or are approved for funding by NOAA and other federal agencies, hence, awards may not necessarily be made to the highest-scored proposal; (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. A summary statement of the scientific review by the peer panel will be provided to each applicant.

VI. Instructions for Application

Timetable

December 1, 1999, 5 pm (EST)—Preliminary proposals due at state Sea Grant Program or at NSGO for proposals from non Sea Grant states.

December 6, 1999, 5 pm (EST)—Preliminary proposals that were submitted to the state Sea Grant Programs should be transmitted by those programs to the NSGO so as to be received on this date.

February 15, 2000, 5 pm (EST)—Full proposals due at state Sea Grant Program or at NSGO for proposals from non Sea Grant states.

February 21, 2000, 5 pm (EST)—Full proposals submitted to state Sea Grant Program should be transmitted by those programs to the NSGO so as to be received on this date.

March 29, 2000, 5 pm (EST)—Reviewed full proposals due at NSGO.

July 1, 2000, PM EST (approximate)—Funds awarded to selected recipients projects begin.

General Guidelines

The ideal proposal attacks a well-defined, tractable problem that will be or is a significant societal issue. Ideally the outcome of the proposal will make a tangible impact on that issue. The organization or people whose task it will be to make related decisions, or who will be able to make specific use of the projects results, will have been identified and contacted by the Principal Investigator(s). The project will show an understanding of what constitutes necessary and sufficient information for responsible decision-making or for applied use, and will show how that information will be provided by the proposed activity, or in concert with other planned activities.

Research projects are expected to have: a rigorous, hypothesis-based scientific work plan, or a well-defined, logical approach to address a problem; a strong rationale for the proposed research; and a clear and established relationship with the ultimate users of the information. Projects that are solely monitoring efforts using existing technologies are unlikely to be funded.

What To Submit

Preliminary Proposal Guidelines

To prevent the expenditure of effort that may not be successful, proposers must first submit preliminary proposals. Preliminary proposals must be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8½" x 11" paper. The following information should be included:

(1) Signed title page: The title page should be signed by the Principal Investigator and should clearly identify the program area being addressed by starting the project title with "Environmental Marine Biotechnology". Principal Investigators and collaborators should be identified by affiliation and contact information. The total amount of Federal funds and matching funds being requested should be listed for each budget period, as well as the source of the matching funds; the total should include all subrecipient's budgets on projects involving multiple institutions. Preliminary proposals must include matching funds equivalent to at least 50% of the Federal funds requested.

(2) A concise (2-page limit) description of the project, its expected output or products, the anticipated users of the information, and its anticipated impact. Proposers may wish to use the Evaluation Criteria for additional guidance in preparing the preliminary proposals.

(3) Resumes (1-page limit) of the Principal Investigators.

(4) Proposers are encouraged (but not required) to include a separate page suggesting reviewers that the proposers believe are especially well qualified to review the proposal. Proposers may also designate persons they would prefer not review the proposal, indicating why. These suggestions will be considered during the review process.

Full Proposal Guidelines

Each full proposal must include the first six items listed below: the standard forms included as Item 7 will only be required for proposals selected for funding. All pages should be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8½" x 11" paper. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations and letters of support, if any, are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(1) Signed Title Page: The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title "Environmental Marine Biotechnology". The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each budget period; the total should include all subrecipient's budgets on projects involving multiple institutions.

(2) Project Summary: This information is very important. Prior to attending the peer review panel meetings, some of the panelists may read only the project summary. Therefore, it is critical that the project summary accurately describes the research being proposed and conveys all essential elements of the research. Applicants are encouraged to use Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the

Sea Grant form. The project summary should include: 1. Title: Use the exact title as it appears in the rest of the application. 2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator. 3. Funding: Funding request for each year of the project, including matching funds if appropriate. 4. Project Period: Start and completion dates. Proposals should request a start date of July 1, 2000, or later. 5. Project Summary: This should include the rationale for the project, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of work to be completed.

(3) Project Description (15-page limit):

(a) Introduction/Background/Justification: Subjects that the investigator(s) may wish to include in this section are: (i) Current state of knowledge; (ii) Contributions that the study will make to the particular discipline or subject area; (iii) Contributions and impacts the study will make toward addressing the health of the marine ecosystem utilizing marine biotechnology; and (iv) As appropriate, contributions of investigator's previously funded research results to current proposal.

(b) Research or Technical Plan: (i) Objectives to be achieved, hypotheses to be tested; (ii) Plan of work—discuss how stated project objectives will be achieved; and (iii) Role of project personnel.

(c) Output: Describe the project outputs and impacts that will enhance the Nation's ability in utilizing marine biotechnology to understand and assess the health of the marine ecosystem.

(d) Coordination with other Program Elements: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

(e) Literature Cited: Should be included here, but does not count against the 15-page limit.

(4) Budget and Budget Justification: There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may use their own form as long as it provides the same information as the Sea Grant form. Successful applicants whose awards would be made through a state Sea Grant Program must consult with that state Sea Grant Program budget office to ensure that all necessary overhead costs are included. Subcontracts should have a separate budget page. Matching funds must be indicated if required; failure to provide adequate matching funds will result in the proposal being rejected without review. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested. For all applications, regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) the Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

(5) Current and Pending Support: Applicants must provide information on all current and pending support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. All current project support from whatever source (*e.g.,* Federal, State, or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the Principal Investigator and other senior personnel should be included, even if they receive no Federal salary support from the project(s). The number of person-months per year to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within NOAA.

(6) Vitae (2 pages maximum per investigator).

(7) Standard Application Forms: Applicants may obtain all required application forms at the following Internet website: (http://www.nsgo.seagrant.org/research/rfp/index.html#3), from the state Sea Grant Programs, or from Dr. Linda Kupfer at the NSGO (phone: 301–713–2435 x154 or e-mail: linda.kupfer@noaa.gov). For proposals selected for funding, the following forms must also be submitted:

(a) Standard Forms 424, Application for Federal Assistance, and 424B, Assurances—Non-Construction Programs, (Rev 4–88). Applications should clearly identify the program area being addressed by starting the project title with Environmental Marine Biotechnology. Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. For Section 10, applicants should enter "11.417" for the CFDA Number and Sea Grant Support for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying", and the following explanations are hereby provided:

(i) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities", as required under 15 CFR Part 28, Appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities". Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or subrecipient should be submitted to

DOC in accordance with the instructions contained in the award document.

VII. How To Submit

Preliminary proposals and proposals must be submitted to the state Sea Grant Programs or, for investigators in non Sea Grant states, directly to the National Sea Grant Office (NSGO), according to the schedule outlined above. Although investigators are not required to submit more than 3 copies of either pre-proposals or full proposals, the normal review process requires 10 copies. Investigators are encouraged to submit sufficient copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5" x 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. The addresses of the Sea Grant College Program directors may be found at the following Internet website: (http://www.nsgo.seagrant.org/SGDirectors.html) or may be obtained by contacting the Program Manager, Dr. Linda Kupfer at the NSGO (phone: 301–713–2435 x154 or e-mail: linda.kupfer@noaa.gov). Pre-proposals and proposals sent to the NSGO should be addressed to: NSGO, R/SG, Attn.: Mrs. Geraldine Taylor, Environmental Marine Biotechnology, 1315 East-West Highway, Room 11806, Silver Spring, MD 20910 (phone number for express mail applications is 301–713–2435).

Applications received after the deadline and applications that deviate from the format described above will be returned to the sender without review. Facsimile transmissions and electronic mail submission of pre-proposals and full proposals will not be accepted.

VIII. Other Requirements

(A) Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Pre-Award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(D) No Obligation for Future Funding—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(H) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs".

(I) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(J) Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

(K) For awards receiving funding for the collection or production of geospatial data (e.g., GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 Fed. Reg. 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: (http://www.fgdc.gov/standards/standards/html).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant Budget Form, 90–4, Sea Grant Summary Form, 90–2, and Standard Forms 424, and 424b have been approved under control numbers 0648–0362, 0648–0362, 0348–0043, and 0348–0040 with average responses estimated to take 15, 20, 45, and 15 minutes, respectively. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these estimates or any other aspect of these collections to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of

information displays a currently valid OMB Control Number.

Dated: October 27, 1999.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 99–28574 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102699A]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held November 17–18, 1999.

ADDRESSES: All meetings will be held at the Caravelle Hotel, 44A, Queen Cross Street, Christiansted, St. Croix, U.S.V.I. 00820

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 99th regular public meeting to discuss the items contained in the following agenda:

Call to Order
Adoption of Agenda
Consideration of 98th Council Minutes
Executive Director's Report
Proposal for Rapid Assessment of Fish Kills
Update on Marine Conservation District
Sustainable Fisheries Act
Change to Sustainable Fisheries Act Document
Marine Recreational Fisheries Statistics Survey
Essential Fish Habitat Amendment
Trap Impact Studies
Reef Fish FMP
Subcommittee Meeting Report and Consideration of Statistical and Scientific Committee (SSC) and Advisory Panel (AP) Recommendations
Queen Conch FMP
Subcommittee Meeting Report and Consideration of SSC and AP Recommendations
Coastal Pelagics FMP (Wahoo/Dolphin)
Subcommittee Meeting Report and Consideration of SSC and AP Recommendations
Enforcement
-Federal Government
-Puerto Rico
-U.S. Virgin Islands

Administrative Committee Recommendations
Meetings Attended by Council Members and Staff
Other Business

Next Council Meeting

The Council will convene on Wednesday, November 17, 1999, from 1:00 p.m. to 5:00 p.m., through Thursday, November 18, 1999, from 9:00 a.m. until noon, approximately. The Administrative Committee will meet on Wednesday, November 17, 1999, from 5:00 p.m. to 6:00 p.m., to discuss administrative matters regarding Council operation.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

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

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: October 27, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–28537 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

October 25, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new textile export license/commercial invoice printed on light blue guilloche patterned background paper.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Governments of the United States and the People's Republic of China have agreed to amend the existing export visa requirements to provide for the use of a new textile export license/commercial invoice, issued by the Government of the People's Republic of China, for shipments of goods produced or manufactured in China and exported from China on and after January 1, 2000. The new license/invoice shall be printed on light blue guilloche patterned background paper with the map of the People's Republic of China in the middle. The light blue form replaces the jade green form currently in use. The visa stamp is not being changed at this time.

Shipments of textile and apparel products which are produced or manufactured in China and exported from China during the period January 1, 2000 through January 31, 2000 may be accompanied by a visa printed on either the jade green background paper or the light blue background paper as described above. Both the jade green and the light blue forms have a map of the People's Republic of China in the middle.

See 62 FR 15465, published on April 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 25, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa arrangement for certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on January 1, 2000, for products exported from China on or after January 1, 2000, you are directed to amend the March 27, 1997 directive to provide for the use of export licenses/commercial invoices issued by the Government of the People's Republic of China which are printed on light blue guilloche patterned background paper with a map of the People's Republic of China in the middle. The light blue form will replace the jade green form currently being used.

To facilitate implementation of this amendment to the export licensing system, you are directed to permit entry of textile products, produced or manufactured in China and exported from China during the period January 1, 2000 through January 31, 2000, for which the Government of the People's Republic of China has issued an export license/commercial invoice printed on either the jade green background paper or the light blue background paper as described above. Both the jade green and light blue forms have a map of the People's Republic of China in the middle.

Products exported on and after February 1, 2000 must be accompanied by an export visa issued by the Government of the People's Republic of China on the light blue license/invoice form.

The requirements for ELVIS (Electronic Visa Information System) remain unchanged.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–28462 Filed 10–29–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

Notice of Open Meeting

AGENCY: Department of Energy (DOE).

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, November 8, 1999: 6:00 p.m.–8:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

OTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

6:00 p.m.—Call to order
6:05 p.m.—Discussion with Environmental Health Investigation Team
7:00 p.m.—Review of Site Corrective Action Plan
8:00 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days before the date of the meeting due to a request by the DOE Paducah site office that the EM–SSAB, Paducah, advise DOE on the corrective action plan prepared to address the draft Environmental Health Report. The final corrective action plan is due in late November. In order for the comments of the EM–SSAB, Paducah, to be incorporated in the final report, an SSAB meeting has to be scheduled for November 8, 1999.

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 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on October 27, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–28524 Filed 10–29–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[DE–PS36–00GO10482]

Supplemental Announcement Number 01, Hydrogen Technologies, to the Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration

AGENCY: The Department of Energy (DOE).

ACTION: Request for applications for research and development projects in support of the DOE Hydrogen Program.

SUMMARY: The DOE Office of Power Technologies is funding a competitive financial assistance program in support of the DOE Hydrogen Program. Proposals are requested under a DOE Broad Based Solicitation that is anticipated to result in the award of one or more cooperative agreements in Fiscal Year 2000.

SUPPLEMENTARY INFORMATION:

Background Information

The Office of Power Technologies (OPT) of the DOE Office of Energy Efficiency and Renewable Energy (EERE) is supporting the issuance of this

Supplemental Announcement to the EERE Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE–PS36–00GO10482. The Broad Based Solicitation contains information that must be used in conjunction with this Supplemental Announcement when applying for an award. Thus, in order to prepare a complete application, it is mandatory to comply with the requirements of the overall Broad Based Solicitation document, DE–PS36–00GO10482 (found on the Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicitations.html) as well as the requirements of this Supplemental Announcement 01 document.

Under this Supplemental Announcement, DOE is seeking research and development (R&D) proposals that can advance hydrogen production, storage, and utilization technologies. It is anticipated that projects may be selected for initial awards with a possible continuation into subsequent years. DOE is proposing to undertake this effort under the Hydrogen Future Act of 1996, Public Law 104–271.

This solicitation is for Financial Assistance Applications, and the Statement of Work (SOW) and budget information requested under this Supplemental Announcement should only address the initial period of up to 12 months. The objective is to develop detailed R&D plans to validate the proposed hydrogen concept, along with necessary preliminary R&D and the development of other supporting documentation. Awards, if any will result from a merit review process applied to the applications.

DATES: Applications should be submitted as described in the Supplemental Announcement by December 15, 1999.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401. The Project Engineer is Doug Hooker, at (303) 275–4780 or e-mail at doug__hooker@nrel.gov. The Contracting Officer is Beth Peterman, at FAX: (303) 275–4788 or e-mail at beth__peterman@nrel.gov. The Supplemental Announcement can be obtained from the GFO website at *www.eren.doe.gov/golden/solicitations.html* as of the week of October 25, 1999. If unable to access the internet, you may obtain a copy of the Solicitation by calling Amy Castelli at (303) 275–4716, FAX (303) 275–4788.

Issued in Golden, Colorado, on October 25, 1999.

Matthew A. Barron,

Contracting Officer, GO.

[FR Doc. 99–28526 Filed 10–29–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Competitive Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice of Competitive Financial Assistance Solicitation.

SUMMARY: The Department of Energy (DOE) announces a competitive solicitation for applications for grants and cooperative agreements for information dissemination, public outreach, training, and related technical analysis and technical assistance activities involving renewable energy and energy efficiency. It is estimated that funding of approximately $4 to $6 million will be available under renewable energy programs, and $3.5 to $4.5 million will be available under energy efficiency programs for awards under this solicitation in fiscal year 2000. Areas of interest involving renewable energy include wind, photovoltaic, hydrogen, and bioenergy technologies. Energy efficiency areas of interest include energy efficiency in the transportation, buildings, and industrial sectors. The awards may be for a period of six months to three years. Proposals will be subject to the objective merit review procedures for the Office of Energy Efficiency and Renewable Energy (EERE). Eligible applicants for this solicitation are profit organizations, non-profit institutions and organizations, state and local governments, universities, individuals, Native American organizations, and Alaskan Native Corporations.

ADDRESSES: The formal solicitation document, which will include greater detail about specific program areas of interest, application instructions, and evaluation criteria, is expected to be issued mid-November 1999. The solicitation will include specific funding totals for each program area of interest. Application due dates for the various program areas will be staggered throughout January 2000, and applications will be processed by three DOE procurement offices to expedite awards. Prospective applicants under Program Area 6A, Technology and Systems Integration: Information Dissemination, Outreach, and Related Analysis, will be encouraged to submit a pre-application, not longer than two pages, on or around December 10th, 1999. A response to the pre-application encouraging or discouraging a formal application will be communicated to the applicant.

The formal solicitation document will be disseminated electronically as solicitation number DE–PS01–00EE10722 through the Department's Current Business Opportunities of the Headquarters Procurement Services Homepage located at *www.pr.doe.gov/solicit.html* and the *Industry Interactive Procurement System (IIPS)* Homepage located at *http://doe-iips.pr.doe.gov.* Effective October 1st, 1999, the IIPS system will become the primary way for the Office of Headquarters Procurement Services to conduct competitive acquisitions and financial assistance transactions. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and proposals, evaluating, and awarding various instruments in a paperless environment.

To get more information about IIPS and to register your organization, go to *http://doe-iips.pr.doe.gov.* Follow the link on the IIPS home page to the Secure Services page. Registration is a prerequisite to the submission of an application, and applicants are encouraged to register as soon as possible. A help document, which describes how IIPS works, can be found at the bottom of the Secure Services page.

FOR FURTHER INFORMATION: Contact the U.S. Department of Energy, Office of Headquarters Procurement Services, Attention MA–542 (Demer, EERE–2000), 1000 Independence Ave., SW, Washington, DC 20585, telephone number 800–683–0751, or e-mail at: eere.grants@pr.doe.gov. Questions or comments should be categorized as *administrative or financial assistance related.* Administrative questions or comments relate only to the operation of IIPS. All questions or comments should be directed to the attention of Mr. Nickolas A. Demer. The preferred method of submitting questions and/or comments is through e-mail. Only questions and comments submitted to Mr. Demer will be considered. Questions and/or comments requiring coordination with EERE program officials will be directed by DOE personnel to the cognizant offices internally through IIPS.

SUPPLEMENTARY INFORMATION: The Office of EERE supports DOE's strategic objectives of increasing the efficiency and productivity of energy use, while

limiting environmental impacts; reducing the vulnerability of the U.S. economy to disruptions in energy supplies; ensuring that a competitive electric utility industry is in place that can deliver adequate and affordable supplies with reduced environmental impacts; supporting U.S. energy, environmental, and economic interests in global markets; and delivering leading-edge technologies. A key component of this program is the support of information dissemination, public outreach, training and related technical analysis and technical assistance activities to: (1) stimulate increased energy efficiency in transportation, buildings, and industry and increased use of renewable energy; and (2) accelerate the adoption of new technologies to increase energy efficiency and the use of renewable energy. The purpose of this solicitation is to further these objectives through financial assistance in the following areas:

Office of Power Technologies (OPT)—The primary mission of this Office is to lead the national effort to develop solar and other renewable energy technologies and to accelerate their acceptance and use on a national and international level. Also, OPT develops advanced high temperature superconducting power equipment and energy storage systems, addresses advanced technology needs for transmission and distribution systems, and provides information and technical assistance on electric utility restructuring issues. Financial assistance applications will be requested for information dissemination, public outreach, and related technical analysis activities involving several specific renewable technologies such as wind, photovoltaic, and hydrogen technologies. Also, proposals will be requested to perform the following activities: information dissemination, technical assistance, and outreach relating to electric utility restructuring; export market analysis, development, promotion, education, communication, and outreach for U.S. energy efficiency technologies; co-sponsorship of conferences involving the power technologies sector; the development of interdisciplinary undergraduate course curriculum on renewable energy; and Internet-based dissemination of information on Federal, State, and Local government incentives for renewable energy technologies. In addition, a draft request for proposals will be included for the development of energy project proposals for submission to the U.S. Initiative on Joint Implementation. This draft will be finalized early in calendar year 2000 following the completion of the United Nations Fifth Conference of the Parties and subsequent interagency negotiations in the United States.

Office of Industrial Technologies (OIT)—The mission of this Office is to improve the energy efficiency and pollution prevention performance of U.S. industry. The Office has a particular focus on nine industries, including the aluminum, steel, metal casting, glass, forest and paper products, chemicals, petroleum refining, agriculture, and mining industries. At the national level, the Office has successfully facilitated the development of industry visions and technology roadmaps with these nine industries. Financial assistance applications will be requested to support information dissemination and outreach to facilitate multi-States implementation of the Industries of the Future program.

Office of Transportation Technologies (OTT)—The mission of this Office is to support the development and use of advanced transportation vehicles and alternative fuel technologies which will reduce energy demand, particularly for petroleum; reduce criteria pollutant emissions and greenhouse gas emissions; and enable the U.S. transportation industry to sustain a strong competitive position in domestic and world markets. Financial assistance applications will be requested to support training for local Clean Cities Coalitions; workshops and conferences related to the Clean Cities Program; and technical assistance and outreach to Western Hemispheric countries to promote the adoption of Clean Cities Programs or similar volunteer programs to expand the use of alternative fuels and alternative fuel technologies.

Office of Building Technology, State and Community Programs (BTS)—The mission of this Office is to develop, promote, and integrate energy technologies and practices to make buildings more efficient and affordable and communities more livable. Financial assistance applications will be requested to support information dissemination, public outreach, and related technical analysis activities for the following BTS priorities: addressing the efficient and renewable energy technology information deficit among commercial building constructors, owners, and managers; promoting energy efficiency and renewable energy utilization as a public value for residential builders and home buyers; increasing the availability of energy efficient school design, retrofit and technical resource information for school board members and school administrators; preparing the building trades, building operators, and building managers for the new generation of efficient and renewable energy technologies; promoting the widespread installation of dedicated compact fluorescent lamp fixtures; and strengthening the *Rebuild America Program* through outreach activities with stakeholder organizations representing facility managers, business officials, and policy makers at colleges and universities, State and Local governments, elementary and secondary schools, and public and other low-income housing.

Bioenergy Initiative—The purpose of the Bioenergy Initiative is to assure coordination and integration of biomass related activities. A major goal of the Initiative is to triple U.S. use of bioenergy and biobased products by 2010. Applications will be requested for projects involving outreach about the benefits and useful applications of bioenergy and biobased products to one or more of the following types of entities: national environmental organizations, national agricultural organizations, State environmental and community development agencies, and other State policy makers.

The Office of the Assistant Secretary for EERE has the overall management responsibility for the entire Office of EERE, including the OPT, OTT, OIT, BTS, and the *Federal Energy Management Program (FEMP)*. Financial assistance applications will be requested to support information dissemination, outreach, and related analysis activities under Program Area 6A, *Technology and Systems Integration: Information Dissemination, Outreach, and Related Analysis*, for projects which have the objectives to:

(1) encourage the design, development, and adoption of energy efficiency and/or renewable energy systems that incorporate two or more technologies, or incorporate technology(ies) supported by at least two DOE program offices (including at least one from EERE), and that have identified potential for multiple applications across sectors;

(2) stimulate greater technology integration and systems integration activities, including multi-application product development (a) within the energy efficiency and renewable energy sector (e.g., multi-feedstock/multi-product biorefineries; distributed power generation technologies, applications, and grid interface issues; combined heat-and-power systems; industrial, commercial, and district-energy concepts; on-site clean fuel production and automotive fueling systems; and active/passive commercial building energy management systems); and (b) between EERE and the fossil energy sector (e.g., coal/biomass co-firing; higher efficiency

natural gas technologies; multi-fuel microturbines; carbon extraction and sequestration technologies);

(3) encourage the design, development, and adoption of EERE technology-based strategies for accomplishing environmental and human health objectives under the Clean Air Act and other environmental laws and policies, particularly at the State and Local government level;

(4) encourage the use of Geographical Information Systems (GIS) and other computer-assisted analytical, planning, and decision-support tools to assist communities to evaluate the energy, environmental, and economic impacts and costs of various options for energy generation, distribution, and use; and

(5) develop financial risk and liability models for investments in EERE technologies and systems in order to assist investors and other stakeholders to evaluate financial risk exposure resulting from energy investment choices.

In addition, financial assistance applications will be requested to support region-wide technical assistance activities in developing countries and countries in transition to support the development of human and institutional capabilities related to EERE by governmental entities, not-for-profit organizations, and industry organizations. The region-wide activities must encompass one of the following regions: Latin America, Africa, South Asia, or Eastern Europe, and encompass several countries within that region.

Million Solar Roofs Initiative (MSRI)—The purpose of the MSRI is to spur the installation of solar energy systems on one million U.S. buildings by 2010. The initiative seeks to catalyze market demand through the elimination of barriers to the use of solar energy systems on buildings and the establishment of State and Community Partnerships. Applications will be requested under this solicitation to develop information, training, and workshops to assist in the elimination of specific barriers. A separate solicitation providing direct support to Million Solar Roofs State and Community Partnerships will be issued by the Golden Field Office not later than January 2000. Additional information about the programs of the Office of EERE can be obtained at the Office's Internet site at *http://www.eren.doe.gov/ee.html*.

Issued in Washington, D.C. on October 26th, 1999.

Arnold A. Gjerstad,

Acting Director, Program Services Division, Office of Headquarters Procurement Services.

[FR Doc. 99–28525 Filed 10–29–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–254–003]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes to FERC Gas Tariff

October 26, 1999.

Take notice that on October 19, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, (Tariff) one original and five copies of First Revised Sheet No. 94a to become effective November 1, 1999.

Destin states that the purpose of this filing is to comply with the Commission's letter order dated October 4, 1999 in the above-referenced docket. Destin states that it will provide shippers with individual notice by facsimile or electronic mail of any scheduled quantities that are being bumped. Destin has requested that this sheet be made effective as of November 1, 1999. Destin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28447 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–613–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

October 26, 1999.

Take notice that on October 18, 1999, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Second Revised Volume No. 2, certain tariff sheets to be effective October 18, 1999.

Natural states that these tariff sheets were filed to cancel gas exchange agreements between Natural and Transcontinental Gas Pipe Line Corporation (Transco) under Natural's Rate Schedules X–59, X–71, X–117 and X–135. Natural states that the tariff sheets were filed in compliance with Ordering Paragraph (A) of the Federal Energy Regulatory Commission's (Commission) order issued October 6, 1999 in Docket No. CP99–613–000.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective October 18, 1999, the date of this filing, pursuant to current Commission policy.

Natural states that it mailed a copy of this filing to the affected party, Transco.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28445 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–477–002]

North American Energy Conservation, Inc. v. CNG Transmission Corporation; Notice of Compliance Filing

Octobr 26, 1999.

Take notice that on October 18, 1999, CNG Transmission Corporation (CNG) tendered a filing in the above referenced docket to comply with the Commission's order dated September 17, 1999 in this proceeding. 88 FERC 61,255 (1999) ("September 17 Order").

CNG included its compliance as part of another document which included its request for rehearing of the September 18, 1999 order, in Docket No. RP99–477–001.

CNG states that the Commission Order directed CNG to respond to several questions about CNG's capacity reservation and posting practices. CNG states the Commission outlined three specific issues with respect to CNG's practices: (1) reservation of capacity; (2) minimum term posting; and (3) an August 2, 1999 posting. CNG states that its filings addresses these issues.

CNG requests confidential treatment for shipper agreements submitted as Attachments A and B of said filing. As explained in the filing, CNG asserts that public disclosure of this information would put one of CNG's customers at a competitive disadvantage.

Any party desiring to comment in this filing should file comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, on or before November 8, 1999. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28446 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–364–004 and RP99–251–004]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

October 26, 1999.

Take notice that on October 19, 1999, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, (Tariff) one original and five copies of Second Revised Sheet No. 88 to become effective November 1, 1999.

South Georgia states that the purpose of this filing is to comply with the Commission's letter order dated October 4, 1999 in the above-referenced docket. South Georgia states that it will provide shippers with individual notice by facsimile or electronic mail of any scheduled quantities that are being bumped. South Georgia has requested that these sheets be made effective as of November 1, 1999. South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood. A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28443 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–363–004 and RP99–253–006]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

October 26, 1999.

Take notice that on October 19, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, (Tariff) Second Revised Sheet No. 155 to become effective November 1, 1999.

Southern states that the purpose of this filing is to comply with the Commission's letter order dated October 4, 1999 in the above-referenced docket. Southern states that it will provide shippers with individual notice by facsimile or electronic mail of any scheduled quantities that are being bumped. Southern requested that this sheet be made effective as of November 1, 1999. Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28442 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–26–000]

TransColorado Gas Transmission Company; Notice of Request for Limited Waiver

October 26, 1999.

On October 15, 1999, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, TransColorado Gas Transmission Company (TransColorado) hereby petitions the Commission for a limited waiver of Section 284.10(b) of the Commission's Regulations and the nomination procedures in TransColorado's FERC Gas Tariff.

Specifically, TransColorado seeks waiver of certain nomination cycles during the period between the end of 1999 and the beginning of 2000 (Y2K rollover period). The limited waiver is intended to diminish the potential for business disruptions and to promote stability of business transactions during the Y2K rollover period. The requested waiver is consistent with the limited waiver that Southern Natural Gas Company (Southern) and its affiliate pipelines filed on or about October 12, 1999 (Southern model), except that TransColorado does not request waiver for capacity-release transactions as did Southern.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28444 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–10–000, et al.]

Berkshire Power Company, LLC, et al; Electric Rate and Corporate Regulation Filings

October 22, 1999.

Take notice that the following filings have been made with the Commission:

1. Berkshire Power Company, LLC

[Docket No. EG00–10–000]

Take notice that on October 18, 1999, Berkshire Power Company, LLC (Berkshire Power), 200 High Street, 5th Floor, Boston, Massachusetts 02110, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended (the Application).

The Application seeks a determination that Berkshire Power will maintain Exempt Wholesale Generator Status after a transfer for financing purposes of certain upstream equity interests to Mesquite Investors, L.L.C., a newly-created entity, and El Paso Power Holding Company, a direct subsidiary of El Paso Energy Corporation, as described in the Application. Berkshire Power is a Massachusetts limited liability company that was formed for the purpose of owning and operating the Berkshire Power Plant (Facility), a 272-megawatt gas-fired generation plant being constructed in Agawam, Massachusetts, and is directly and exclusively engaged in the generation of electric energy for sale at wholesale. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge that represents recovery of the cost of wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992.

Copies of this application have been served upon the Massachusetts Department of Telecommunications and Energy and the Securities and Exchange Commission.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments those that concern the adequacy or accuracy of the application.

2. Public Service Company of New Hampshire

[Docket Nos. EL96–53–005 and EL95–37–000]

Take notice that on October 15, 1999, Public Service Company of New Hampshire (PSNH) filed a settlement between PSNH and the New Hampshire Electric Cooperative, Inc. (NHEC), which restructures electric services provided by PSNH to NHEC and terminates pending agreements, a letter agreement and notice of cancellation, is being made pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and Part 35 of the Commission';s Regulations, 18 CFR Part 35. Because this filing terminates pending FERC proceedings, Docket Nos. EL96–53–000 and EL95–37–000, it also is being submitted pursuant to Rule 602 (18 CFR 385.602).

The requested effective date for the agreements is January 1, 2000.

The Applicant states that copies of this filing have been sent to the New Hampshire Public Utilities Commission and the parties to Docket No. EL96–53–000.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Yadkin, Inc.

[Docket No. ER96–2603–002]

Take notice that on October 15, 1999, Yadkin, Inc., tendered for filing an updated generation market power analysis.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Indiana Gas and Electric Company

[Docket No. ER96–2734–002]

Take notice that on October 15, 1999, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing an updated market power study in compliance with an order issued by the Federal Energy Regulatory Commission on October 15, 1996, in the above-referenced docket. See Southern Indiana Gas and Electric Company, 77 FERC ¶ 61,024 (1996).

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Reliable Energy, Inc.

[Docket No. ER98–3261–002]

Take notice that on October 18, 1999, the above-mentioned power marketer filed its quarterly report with the Commission in the above-mentioned proceeding for information only.

6. Carolina Power & Light Company, Monroe Power Company

[Docket Nos. ER99–2311–002 and ER99–2324–002 (not consolidated)]

Take notice that on October 19, 1999, Carolina Power and Light Company (CP&L) and Monroe Power Company (MPC) notified the Commission of a change in status associated with CP&L's proposed share exchange with the Florida Progress Corporation.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. CMS Generation Michigan Power, LLC, Front Range Energy Associates, LLC, Central Maine Power Company, Deseret Generation & Transmission Co-operative

[Docket Nos. ER00–121–000, ER00–141–000, ER00–142–000, ER00–145–000]

Take notice that on October 18, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. North Atlantic Energy Corporation

[Docket No. ER00–126–000]

Take notice that on October 15, 1999, North Atlantic Energy Corporation (North Atlantic), pursuant to Section 205 of the Federal Power Act, tendered for filing proposed changes to charges for decommissioning Seabrook Unit 1 to be collected under North Atlantic Federal Energy Regulatory Commission Rate Schedules Nos. 1 and 3. These charges are recovered under a formula rate that is not changed by the filing. The proposed adjustment in charges is necessitated by a ruling of the New Hampshire Nuclear Decommissioning Finance Committee adjusting the

funding requirements for decommissioning Seabrook Unit 1.

North Atlantic has requested waiver of the notice and filing requirements to accept a retroactive effective date of June 8, 1999 (including adjusted decommissioning funding amounts due from January 1, 1999 to June 30, 1999 under the new funding requirements as billed by NAESCO to North Atlantic in accordance with the Final Order).

Copies of this filing were served upon North Atlantic's jurisdictional customer and the New Hampshire Public Utilities Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Company

[Docket No. ER00–127–000]

Take notice that on October 15, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with Citizens Utilities Company Vermont Electric Division. (Citizens Utilities VED) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Citizens Utilities VED as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to Citizens Utilities VED and to the Pennsylvania Public Utility Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER00–128–000]

Take notice that on October 15, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with NUI Energy Brokers, Inc. (NUIEB) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NUIEB as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to NUIEB and to the Pennsylvania Public Utility Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER00–129–000]

Take notice that on October 15, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with Enron Energy Services, Inc. (EESI), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds EESI as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to EESI and to the Pennsylvania Public Utility Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Wolverine Power Supply Cooperative, Inc. Atlantic City Electric Company, Delmarva Power & Light Company, Delmarva Power & Light Company,Arizona Public Service Company

[Docket No. ER00–130–000, ER00–132–000, ER00–131–000, ER00–133–000, ER00–137–000]

Take notice that on October 15, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. FortisUS Energy Corporation

[Docket No. ER00–136–000]

Take notice that on October 15, 1999, FortisUS Energy Corporation (FortisUS) tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of electric capacity and energy, including certain ancillary services, at market-based rates and for related waivers and blanket authorizations.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER00–138–000]

That notice that on October 15, 1999, Arizona Public Service Company (APS), tendered for filing a revised Contract Demand Exhibit A to APS–FERC Rate Schedule No. 170 between APS and the Town of Wickenburg (Wickenburg) for the Operating Year 1999–2000 through 2003–2004.

Current rate and revenue levels are unaffected. No other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on the Town of Wickenburg and the Arizona Corporation Commission.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER00–139–000]

Take notice that on October 15, 1999, Commonwealth Edison Company (ComEd), tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of Service Agreement No. 22 between ComEd and Upper Peninsula Power Company (UPP) under ComEd's Market-Based Rate Schedule (FERC Electric Tariff, Original Volume No. 6).

ComEd requests an effective date of December 14, 1999, for the cancellation.

ComEd served copies of the filing upon UPP.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28492 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–726–003, et al.]

Great Bay Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

October 26, 1999.

Take notice that the following filings have been made with the Commission:

1. Great Bay Power Corporation

[Docket No. ER96–726-003]

Take notice that on October 18, 1999, Great Bay Power Corporation (Great Bay), tendered for filing an updated generation market power analysis.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Southern Indiana Gas and Electric Company

[Docket No. ER96–2734–002

Take notice that on October 15, 1999, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing an updated market power study in compliance with an order issued by the Federal Energy Regulatory Commission on October 15, 1996, in the above-referenced docket. See Southern Indiana Gas and Electric Company, 77 FERC ¶61,024 (1996).

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Dayton Power and Light Company

[Docket No. ER98–1292–001]

Take notice that on October 18, 1999, Dayton Power and Light Company (Dayton), tendered for filing a refund compliance report in accordance with the Commission's Order approving the settlement in Docket Nos. ER98–1292–000 and EL98–20–000.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. California Power Exchange Corporation

[Docket No. ER99–2229–002]

Take notice that on October 18, 1999, the California Power Exchange Corporation (PX), tendered for filing a compliance filing in response to the Commission's September 17, 1999 order in this proceeding. The compliance filing addresses the allocation of costs between CalPX and its division known as CalPx Trading Services (CTS).

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Energy Corporation

[Docket No. ER99–2331–002]

Take notice that on October 18, 1999, Duke Electric Transmission, a division of Duke Energy Corporation (Duke), tendered for filing a compliance filing in the above-referenced docket involving generation imbalance charges.

Duke states that a copy of the filing has been served on the Service List in this proceeding.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Delmarva Power & Light Company

[Docket No. ER99–3468–002]

Take notice that on October 18, 1999, Delmarva Power & Light Company (Delmarva), tendered a compliance filing to comport with the Commission's Order issued on September 17, 1999. The filing revises an unexecuted Interconnection Agreement between Delmarva and the Commonwealth Chesapeake Company, LLC.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company AmerGen Energy Company, L.L.C.

[Docket No. ER99–4034–000]

Take notice that on October 19, 1999 AmerGen Energy Company, L.L.C. and Illinois Power Company jointly tendered for filing an amendment to their filing submitted in this docket on August 9, 1999. The amendment is intended to address the deficiency letter issued in this docket on September 13, 1999 by the Director, Division of Rate Applications.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Metropolitan Edison Company

[Docket No. ER00–134–000]

Take notice that on October 15, 1999, Metropolitan Edison Company (doing business and referred to as GPU Energy), tendered for filing a Generation Facility Transmission Interconnection Agreement between GPU Energy and Solar Turbines Incorporated.

GPU Energy requests an effective date of October 18, 1999, for the agreement.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ER00–135–000]

Take notice that on October 15, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing 12 executed service agreements for transmission service under the PJM Open Access Transmission Tariff. The agreements are as follows: 4 umbrella agreements for firm point-to-point transmission service agreements with Energy America L.L.C., Shell Energy Services Company, L.L.C., Sithe Power Marketing, L.P., and Utility.com, Inc.; 4 umbrella non-firm point-to-point transmission service agreements with Energy America L.L.C., Shell Energy Services Company, L.L.C., Sithe Power Marketing, L.P., and Utility.com, Inc.; and 4 umbrella agreements for network integration transmission service under state required retail access programs with Energy America L.L.C., Reliant Energy Retail, Inc., Shell Energy Services Company, L.L.C., and Utility.com, Inc.

Copies of this filing were served upon the parties to the service agreements.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. SmartEnergy.Com, Inc.

[Docket No. ER00–140–000]

Take notice that on October 15, 1999, SmartEnergy.Com, Inc. (SmartEnergy), petitioned the Commission for acceptance of SmartEnergy Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

SmartEnergy intends to engage in wholesale electric power and energy purchases and sales as a marketer. SmartEnergy is not in the business of generating or transmitting electric power. SmartEnergy has no members who own or control any electric generation, transmission, franchised retail service territories, generation sites, natural gas fuel supplies, or any other potential barriers to entry.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Ohio Power Company

[Docket No. ER00–144–000]

Take notice that on October 18, 1999, Ohio Power Company (Ohio Power), tendered for filing Amendment No. 8, to the Station Agreement among Ohio Power Company, Buckeye Power, Inc., and Cardinal Operating Company.

Ohio Power requests that the amendment be made effective as soon as possible, but in no event later than 60 days from the date of filing.

Copies of the filing were served upon Buckeye Power, Inc., and the Public Utilities Commission of Ohio.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. South Carolina Electric & Gas Company

[Docket No. ER00–146–000]

Take notice that on October 18, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing an unsigned service agreement establishing Statoil Energy Inc. as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Statoil Energy Inc., and the South Carolina Public Service Commission.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Pool

[Docket No. ER00–147–000]

Take notice that on October 18, 1999, the New England Power Pool Participants Committee (NEPOOL), tendered for filing a Special Y2K Transitional Rule (Y2K Transitional Rule) in the above-captioned docket.

NEPOOL has requested that the Commission permit the Y2K Transitional Rule to become effective as of December 17, 1999.

NEPOOL states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. ER00–148–000]

Take notice that on October 19, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Network Integration Transmission Service Agreement with MidAmerican Energy Company (MidAmerican, as a retail merchant) dated September 24, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of September 24, 1999, for the Network Integration Transmission Service Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ER00–149–000]

Take notice that on October 19, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 8, 1999, between KCPL and Northern States Power Company. This Agreement provides for the rates and charges for Short-term Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of September 22, 1999 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Kansas City Power & Light Company

[Docket No. ER00–150–000]

Take notice that on October 19, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 8, 1999, between KCPL and El Paso Power Services. This Agreement provides for the rates and charges for Non-Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636.

KCPL proposes an effective date of September 22, 1999 and requests waiver of the Commission's notice requirement.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Green Mountain Power Corporation

[Docket No. ER00–151–000]

Take notice that on October 19, 1999, Green Mountain Power Corporation tendered for filing a Notice of Cancellation of Electric Service Agreement between Green Mountain Power Corporation and Northfield Electric Department of Northfield, Vermont and Power Sales Agreement between Green Mountain Power Corporation and Northfield Electric Department.

Copies of the Notice of Cancellation were served on the Northfield Electric Department and on the Vermont Public Service Board. Vermont and Power Sales Agreement between Green Mountain Power Corporation and Northfield Electric Department.

Copies of the Notice of Cancellation were served on the Northfield Electric Department and on the Vermont Public Service Board.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–152–000]

Take notice that on October 18, 1999, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (Companies), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between the Companies and Illinova Power Marketing, Inc., under the Companies Open Access Transmission Tariff.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–153–000]

Take notice that on October 18, 1999, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (Companies), tendered for filing an unexecuted unilateral Service Agreement between the Companies and Reliant Energy Services, Inc., under the Companies Rate Schedule MBSS.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–154–000]

Take notice that on October 18, 1999, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (Companies), tendered for filing an executed Firm Point-to-Point Transmission Service Agreement between the Companies and Illinova Power Marketing, Inc., under the Companies Open Access Transmission Tariff.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Duquesne Light Company

[Docket No. ER00–155–000]

Take notice that on October 18, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated October 15, 1999 with Duquesne

Light Power Marketing under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Duquesne Light Power Marketing as a customer under the Tariff.

DLC requests an effective date of October 15, 1999 for the Service Agreement.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. North American Electric Reliability Council

[Docket No. ER00–157–000]

Take notice that on October 19, 1999, the North American Electric Reliability Council (NERC), tendered for filing a proposal for a new transmission service, Next Hour Market (NHM) Service. The filing includes a proposed set of standard revisions to the pro forma tariff for adoption into the tariff of each transmission provider that elects to offer the service.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. PSI Energy, Inc.

[Docket No. ER00–188–000]

Take notice that on October 22, 1999, PSI Energy, Inc. (PSI), tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1 (15th Revision) and Original Volume No. 2 (13th Revision), and its Electric Rate Schedule FERC Nos. 233, 234, 241 and 256.

The proposed changes would increase annual revenues from jurisdictional sales and service by $5,004,000 based on the twelve (12)-month period ending December 31, 2000.

PSI has indicated that the filing of new tariffs and rates has been mandated by inadequate earnings on its jurisdictional sales. The average rate of return on such sales is, in its opinion, inadequate to attract the capital required by PSI to pay for necessary expansion of its electric plant and increased operating expenses. PSI also indicated that the filing has been made to satisfy the requirements of the Federal Energy Regulatory Commission in Docket Nos. EC93–6–000, EC93–6–001 and ER94–1015–000.

Copies of the filing were served upon the Indiana Utility Regulatory Commission; the City of Logansport, Indiana; Jackson County Rural Electric Membership Corporation; the Indiana Municipal Power Agency; the Wabash Valley Power Association, Inc.; and the Indiana municipalities of Brooklyn, Coatesville, Dublin, Dunreith, Hagerstown, Knightstown, Lewisville, Montezuma, New Ross, Pittsboro, Rockville, South Whitley, Spiceland, Straughn, Thorntown, Veedersburg and Williamsport.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28491 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

October 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 1934–011.

c. *Date Filed:* September 20, 1999.

d. *Applicant:* Southern California Edison Company (SCE).

e. *Name of Project:* Mill Creek Nos. 2 and 3 Hydroelectric Project.

f. *Location:* On Mill/Creek in San Bernardino County, California near the town of Yucaipa. The project is located within the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant's Contact:* Daryl Fryer, 300 N. Lone Hill Ave., San Dimas, CA, 91773, (909) 394–8700.

i. *FERC Contact:* Any questions on this notice should be addressed to Doan Pham at (202) 219–2851 or e-mail address *doan.pham@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, or protests:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the Project Number (1934–011) on any comments, protests, or motions filed.

k. *Description of Amendment:* SCE filed an application to reflect changes in transmission facilities and project as-built conditions. Certain electrical facilities and transmission lines would be removed from the project boundary because they are part of SCE's interconnected system and are no longer necessary for project's operation and maintenance. SCE also proposes to remove from the project boundary, two access roads and one foot trail that are no longer in existence or not used exclusively for the project. The changes will reduce the project area by about 0.84 acres of lands which are managed by the U.S. Forest Service.

l. *Location of the Application:* A copy of the application is 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. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title

"COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A.Watson, Jr.,

Acting Secretary.

[FR Doc. 99–28448 Filed 10–29–99; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATION COMMISSION

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: October 20, 1999, 64 FR 57449.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 27, 1999, 10 a.m.

CHANGE IN THE MEETING: The following Docket No. has been added to Item CAG–46 on the Agenda scheduled for the October 27, 1999 meeting.

Item No.	Docket No. and company
CAG–46	RP99–500–000, Maritimes & Northeast Pipeline, L.L.C.

David P. Boergers,

Secretary.

[FR Doc. 99–28600 Filed 10–28–99; 12:05 pm]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Standards of Performance for New Stationary Sources Lime Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart HH, Standards of Performance for New Stationary Sources—Lime Manufacturing Plants, OMB Control Number 2060–0063, expiration date 12/31/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, by E-Mail at *Farmer.Sandy@epamail.epa.gov* or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1167.06.

SUPPLEMENTARY INFORMATION: *Title:* NSPS Subpart HH, Standards of Performance for New Stationary Sources—Lime Manufacturing, OMB Control Number 2060–0063, EPA ICR No. 1167.06, expiration date 12/31/99. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Lime Manufacturing Plants were proposed on May 3, 1977 and promulgated on April 26, 1984. These standards apply to each rotary lime kiln used in lime manufacturing, which commenced construction, modification or reconstruction after May 3, 1977. The standards do not apply to facilities used in the manufacture of lime at kraft pulp mills. The purpose of this NSPS is to control the emissions of particulate matter from lime manufacturing plants, specifically from the operation of the rotary lime kilns. The standards limit particulate emissions to 0.30 kilogram per megagram (0.60 lb/ton) of stone feed, and limit opacity to 15% when exiting from a dry emission control device. This information is being collected to assure compliance with 40 CFR part 60, subpart HH.

There are three types of reporting requirements for owners or operators of facilities under this NSPS; (1) notifications (e.g., notice for new construction or reconstruction, anticipated and actual startup dates, initial performance test, and demonstration of the CMS); (2) a report on the results of the performance test; and (3) semiannual reports of instances of occurrence and duration of any startup, shutdown, or malfunctions. The purpose of the notifications are to inform the Agency or delegated authority when a source becomes subject to this standard. Performance tests are conducted to ensure that the new plants operate within the boundaries outlined in the standard. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. Under this standard the data collected by the affected industry is retained at the facility for a minimum of two years and made available for inspection by the Administrator.

The Administrator has judged that PM emissions from lime manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of lime manufacturing plants must notify EPA of construction, modification, startups, shutdowns, malfunctions and performance test dates, as well as provide reports on the initial performance test and annual excess emissions. The industry costs associated with the information collection activity in the standards are capital costs and O&M costs associated with continuous emissions monitoring and labor costs associated with recordkeeping and reporting. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air 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 **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection

of information was published on June 4, 1999.

Burden Statement: The initial burden regarding notifications (40 CFR 60.7) and performance testing (40 CFR 60.8) for a new source subject to this subpart is estimated to average 349.8 hours. The annual public reporting and recordkeeping burden for this collection of information on existing facilities is estimated to average 41 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Lime Manufacturing Plants.

Estimated Number of Respondents: 49.

Frequency of Response: Semi-annually, Initial.

Estimated Total Annual Hour Burden: 4,190.

Estimated Total Annualized Capital, O&M Cost Burden: $95,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1167.06 and OMB Control No. 2060–0063 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 25, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–28502 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Construction Grants Delegation to States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Construction Grants Delegation to States, EPA ICR No. 0909.06 and OMB Control No. 2040–0095, expiration date December 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0909.06.

SUPPLEMENTARY INFORMATION: *Title:* Construction Grants Delegation to States; OMB Control No. 2040–0095; EPA ICR No. 0909.06; expiring 12/31/99. This is a request for extension of a currently approved collection.

Abstract: The purpose of this ICR is to revise and extend the current clearance for the collection of information under the Construction Grants Delegation to States, 40 CFR part 35, subpart J, and Title II of the Clean Water Act (CWA). While the Construction Grants Program is being phased out and replaced by the State Revolving Loan Fund (SRF) program, collection activities for the Construction Grants Program must continue until program completion. The program includes reporting, monitoring and program requirements for municipalities and delegated States.

The information collection activities described in this ICR are authorized under Section 205(g) of the Clean Water Act as amended, 33 U.S.C. 1251 *et seq.*, and under 40 CFR part 35, subpart J. The requested information provides the minimum data necessary for the Federal government to maintain appropriate fiscal accountability for use of section 205(g) construction grant funds. The information is also needed to assure an adequate management overview of those State project review activities that are most important to fiscal and project integrity, design performance, Federal budget control, and attainment of national goals.

Managers at the State and Federal levels both rely on the information described in this ICR. State managers rely on the information for their own program and project administration. Federal managers rely on this information to assess, control, and predict the impacts of the construction grants program on the Federal Treasury and future budget requirements. Federal managers also use this information to respond to OMB and Congressional requests and to maintain fiscal accountability.

In addition, builders of wastewater treatment plants use the information discussed in this ICR. The builders of these plants assess and use the information in the Innovative/Alternative Technology Data Base File to obtain technical information on innovative or alternative wastewater treatment systems.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 7/6/99 (64 FR 36350); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 59.4 hours and 20 hours per response respectively. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and

providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States and municipalities.

Estimated Number of Respondents: 32.

Frequency of Response: On occasion and annually.

Estimated Total Annual Hour Burden: 6016 hours.

Estimated Total Annualized Non-labor Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0909.06 and OMB Control No. 2040–0095 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 25, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–28503 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Recycling and Emissions Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Recycling and Emissions Reduction Program, OMB Control Number: 2060–0256, expiration date: 12/31/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http:/www.epa.gov/icr and refer to EPA ICR No. 1626.07.

SUPPLEMENTARY INFORMATION: *Title:* National Recycling and Emissions Reduction Program (OMB Control No. 2060–0256; EPA ICR No. 1626.07) expiring 12/31/99. This is a request for an extension of a currently approved collection.

Abstract: During 1993, EPA promulgated regulations under section 608 of the Clean Air Act Amendments of 1990 (Act) for the recycling of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) in air-conditioning and refrigeration equipment. These regulations were published in 58 FR 28660 and are codified at 40 CFR subpart F (section 82.150 *et seq.*).

The continued collection of this information will allow the Agency to carry on enforcement of the Act by reducing emissions of class I and class II refrigerants to the lowest achievable level during the service, maintenance, repair, and disposal of appliances in accordance with section 608 of the Act. The Act (40 CFR subpart F (section 82.166)) requires affected entities to maintain records and report requested information to the Agency. The ICR renewal does not include any burden for third-party or public disclosures not previously reviewed and approved by OMB.

Entities affected by this action are refrigeration and air-conditioning contractors, refrigerated transport service dealers, scrap metal recyclers, and automobile dismantlers and recyclers. Additional entities affected include Clean Air Act section 608 technician certification programs, equipment testing organizations, refrigerant wholesalers and purchasers, refrigerant reclaimers, and other establishments that perform refrigerant removal, service, or disposal.

Affected entities are required to maintain records and submit reports. Recordkeeping requirements and submission of reports to EPA vary depending on the entity and the length of time that the entity has been in service. Specific reporting and record keeping requirements were published in 58 FR 28660 and are codified under 40 CFR subpart F (section 82.166).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. the OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 05/21/99 (99 FR 12941); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 0.18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 2,342,047.

Estimated Number of Respondents: 2,342,047.

Frequency of Response: Varies (occasional, annual, and semiannual).

Estimated Total Annual Hour Burden: 419,546 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1626.07 and OMB Control No. 2060–0256 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division

(2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 26, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–28504 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[AZNV017–FOI; FRL–6467–9]

Inadequacy Status of Submitted State Implementation Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of inadequacy determination.

SUMMARY: In this document, Region IX is augmenting the national list of adequacy determinations for State Implementation Plans (SIP) submittals for transportation conformity purposes as identified in 64 FR 31217–31219 (June 10, 1999). This notice describes a finding of inadequacy for the PM_{10} attainment submittals with respect to emissions budget criteria for Clark County, Nevada and Yuma County, Arizona.

DATES: These budgets are effective November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1247 or *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 CFR Part 93, requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do.

Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

On March 2, 1999, the D.C. Circuit Court of Appeals ruled that submitted SIPs cannot be used for conformity determinations unless EPA has affirmatively found the conformity budget adequate through a process providing for public notice and comment. Where EPA finds a budget inadequate, it cannot be used for conformity determinations.

The new process for determining the adequacy of submitted SIP budgets is contained in a May 14, 1999, memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision." EPA will be revising the conformity rule to codify this guidance. You can obtain this guidance at *http://www.epa.gov/oms/traq* from this website, click on the conformity button and look for "Adequacy Review of SIP Submissions for Conformity."

Status of Submitted Budgets

In Las Vegas, Nevada, the serious PM_{10} attainment plan did not establish any PM_{10} emission budgets for the annual or 24 hour PM_{10} standard. Thus the plan does not contain emission budgets that are adequate for use in conformity determinations. In a letter dated July 12, 1999, from EPA to the Nevada Division of Environmental Protection, Region IX determined that the area's budgets are inadequate and we are publishing that finding in this notice.

In Yuma, AZ, the only submitted budgets for transportation conformity purposes pertain to the area's moderate attainment demonstration for the pollutant PM_{10}. In a letter dated July 12, 1999, from EPA to the Arizona Department of Environmental Quality, Region IX determined that the area's budgets are inadequate and we are publishing that finding in this notice.

As stated in the May 14, 1999, guidance, EPA's adequacy review is not to be used to prejudge EPA's ultimate approval or disapproval of the submitted SIPs. Approvability of the two SIPs mentioned in this notice will be addressed in a future rulemaking.

Because both areas have performed certain other emissions analyses, their transportation programs may continue despite this finding of inadequacy regarding submitted budgets. Furthermore, the areas can continue to use these alternative emission analyses for future conformity determinations.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 21, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–28499 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–2]

State and Tribal Environmental Justice Grants Program; Request for Applications Guidance—FY 2000

Purpose of Notice

The purpose of this notice is to solicit applications from eligible candidates under the State and Tribal Environmental Justice (STEJ) Grants Program, sponsored by the U.S. Environmental Protection Agency, Office of Environmental Justice.

For FY 1998 and FY 1999, EPA awarded five STEJ grants each fiscal year totaling $500,000 to (4) states and (1) tribe. Thus, there have been ten grants awarded totaling $1,000,000. A list of the recipients and their project descriptions are provided in Appendix E.

For FY 2000, EPA expects to once again award a total of $500,000 to states and tribes to demonstrate how to effectively address environmental justice issues. A maximum of $100,000 will be awarded to each recipient, contingent upon the availability of funds. A total of five grants are expected to be awarded. The standard project and budget periods are for one year. The grantee can request that the project and budget periods be extended up to three years, with the total budget of $100,000 provided during the first year. This guidance outlines the purpose, authorities, eligibility, and general procedures for application and award of the FY 2000 STEJ Grants.

The application must be postmarked no later than Friday, January 28, 2000.

Grants Program Overview

The STEJ Grants Program was created to provide financial assistance to state and tribal environmental departments that are working to address environmental justice issues, and to support efforts to establish environmental justice programs.

A. Program Goals

The STEJ Grants Program is intended to assist states and tribes in ultimately achieving the following environmental justice goals and objectives:

- Reduce or prevent disproportionately high and adverse

human health or environmental effects on low-income communities and/or minority communities.

- Integrate environmental justice goals into a state's or tribe's policies, programs, operations and activities.
- Provide financial and technical resources to help build the capacity to address environmental justice issues at the state/local community level and tribal/tribal community level.
- Set up model programs to address enforcement and compliance issues in affected communities.
- Integrate measurable environmental justice goals within the annual Performance Partnership Agreement (PPAs) and Memoranda of Understanding (MOUs) between a state and EPA, or within the Tribal Environmental Agreement (TEAs) between EPA and a tribe.
- Improve public participation in the decision-making processes (*e.g.* permitting processes, development of regulations and policies).

B. Background on Environmental Justice

EPA considers environmental justice to be the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, or income with respect to the development, implementation, enforcement and compliance of environmental laws, regulations, and policies. Fair treatment means that no groups of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies.

On February 11, 1994, President Clinton issued Executive Order (EO) 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations" (Appendix A). Environmental justice focuses attention on the need to ensure equal environmental protection, and the equal enforcement of protective environmental laws, rules, regulations, and policies for all.

Eligible Applicants and Activities

C. Who May Submit an Application?

Any state or tribal agency may submit an application if it manages, or is eligible to manage, an EPA program and expressed interest in working with community-based grassroots organizations and other environmental justice stakeholders to address environmental justice concerns in communities. EPA requests that only one application be submitted from each state or tribe interested in receiving assistance. The project can be a partnership involving more than one state department, or if from a tribe, more than one tribal department. The project may also involve a consortium of state or tribal governments. The degree of support provided by top government officials from either the state or tribe will be an important factor in the selection process.

D. May an Individual or Organization Apply?

No. Only a state or federally-recognized tribal government may apply. However, the applying states or tribes should work with community-based grassroots organizations when developing their proposals. Preference will be given to the states or tribes who involve community-based grassroots organizations in the development of their proposals.

E. What Types of Projects Are Eligible for Funding?

Funds are to be used for activities authorized by the appropriate statutory provisions listed in paragraph F below, to accomplish the following: The development of a model state or tribal environmental justice executive order, strategic plan, and/or conduct studies, analyses, and training in the development of a state or tribal environmental justice program.

Preferences

Preference will be given to the states or tribes which have not received a STEJ grant in the past and which include the following in their application:

(1) A description of how environmental justice/community-based grassroots organizations were involved in the development of the proposal, and

(2) Identification of the matching or cost sharing funds to be provided by the state or tribe for the project.

F. What Activities Are Authorized To Be Conducted by Grant Recipients?

The State and Tribal Environmental Justice Grants are for multimedia environmental justice activities. For this reason, each project must include activities which are authorized by two or more of the following environmental statutes.

a. *Clean Water Act,* Section 104(b)(3): Conduct and promote the coordination of research, investigations, experiments, training, demonstration, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

b. *Safe Drinking Water Act,* Sections 1442(b)(3): develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

c. *Solid Waste Disposal Act,* Section 8001(a): Conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to solid waste management and hazardous waste management.

d. Clean Air Act, Section 103(b)(3): conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

e. Toxic Substances Control Act, Section 10(a): conduct research, development, and monitoring activities on toxic substances.

f. Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a): conduct research on pesticides.

g. Comprehensive Environmental Response, Compensation, and Liability Act, Section 311(c): conduct research related to the detection, assessment, and evaluation of the effects on, and risks to, human health from hazardous substances.

h. Marine Protection, Research, and Sanctuaries Act, Section 203: conduct research, investigations, experiments, training, demonstrations, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

G. What Regulations Apply to These Grants?

The STEJ Grants will be governed by 40 CFR Part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments, and OMB Circular A–87. Note, in particular, that there are restrictions on the use of grant funds for lobbying and that grant funds may not be used for intervention in federal regulatory or adjudicatory proceedings.

Funding

H. Are Matching Funds Required?

Matching funds are not required, but are strongly encouraged. EPA may give preference to those states or tribes which provide matching funds, since this would demonstrate a greater commitment.

Application Requirements

I. What Is Required for Applications?

In order to be considered for funding under this program, proposals must have the following: (Note—the points identified after the specific criteria will be used to quantitatively evaluate the proposal, with a maximum of 100 points)

1. Completed Federal Standard Forms (5 Points)

a. Application for Federal Assistance (SF 424) the official form required for all federal grants that requests basic information about the grantee and the proposed project. The applicant must submit the original application, and one additional copy, signed by a person duly authorized.

b. Federal Standard Form (SF 424A) and budget detail, which reflects the total budget for the entire duration of the project. Budget figures/projections should support your work plan/narrative. The EPA portion of these grants will not exceed $100,000, therefore your budget should reflect this upper limit on federal funds.

c. Signed "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" form, and "Certification Regarding Lobbying" form.

2. Clear and Concise Narrative/Work Plan

The Narrative/Work Plan must:

a. effectively describe the project and how it addresses the Eligible Projects, as defined in Section E, (35 points)

b. discuss how the proposed project will meet the Program Goals, as described in Section A, (10 Points)

c. describe how the project addresses issues related to at least two of the environmental statutes listed in Section F, and (10 Points)

d. discuss how the project will be evaluated, what will be the measures of success, and describe how the project/program will be sustained. (25 Points)

The pages of the Work Plan must be letter size (8½" x 11"), with normal type size (12 cpi), and at least 1" margins. The narrative/work plan should be no more than five pages.

3. A letter of commitment from the department head or government head (e.g. governor, president, chairperson, commissioner). (10 Points)

4. State and Tribal applicants should establish working relationships with local community-based organizations in developing their proposals.(*) A list of the organizations who participated in the development of the grant proposal, along with contact names and numbers, is required. (5 Points)

(*) Many community-based organizations across the nation have already begun implementing environmental justice programs at the local level, which states and tribes may want to use as examples to help build their environmental justice programs. By asking those who are most impacted by environmental injustices to participate in building the state's or tribe's environmental justice program, the states and tribes will be more likely to obtain broad support for the concept and the partnership it reflects.

J. When and Where Must Applications Be Submitted?

The applicant must submit one signed original application with the required attachments and one additional copy to the primary contact of the appropriate EPA regional office (see page 8 and Appendix D). The application must be postmarked no later than Friday, January 28, 2000.

Process for Awarding Grants

Proposals are to be developed by states or tribes (EPA encourages the involvement of community-based/grassroots organizations) and submitted to their respective EPA Regional Offices. The initial review will be conducted by each Region through a Regional panel, which will select the top proposals for submission to EPA Headquarters, for final review and selection. The grants will be processed for award and managed by the Regions. The plan is to fund the five best State and/or Tribal environmental justice project proposals. *Note*: Among the proposals receiving the highest rating, EPA may take into account the geographic location and diversity of the proposed projects when making final selections.

STEJ Grant Program Schedule

Nov. 1–January 28 States and Tribes Develop Proposals and Submit to EPA Regions

February 2–March 3 EPA Regions Review Proposals and Provide Recommendations to Headquarters
March 10–April 14 OEJ Headquarters Convenes Review Panel and Receives Recommendations

April 14–May 12 Headquarters Completes Selections and Submits Final Selections to EPA Regional Offices

June 12–July 14 EPA Regional Grants Management Offices Process Applications and Award Grants

August 1 National and Regional Announcements of Awards

Reporting

State and Tribal agencies that are awarded the State and Tribal Environmental Justice (STEJ) grants will be required to submit semi-annual reports, in accordance with 40 CFR sections 31.40 and 31.41, to the appropriate Regional Environmental Justice Coordinator and Project Officer. Reports will include, but not be limited to, information on:

- Funds expended
- Tasks accomplished
- Issues/problems encountered and method of resolution
- Results achieved

A final summary report is required by 40 CFR section 31.40(b) at the end of the project period. This final report should include a discussion on the continuation and institutionalization of the state's and/or tribe's efforts to provide for environmental justice.

If you have any questions regarding the interpretation of this guidance, please call your regional contact listed below, or Daniel Gogal, STEJ Grants Manager, Office of Environmental Justice, at (202) 564–2576 or 1–800–962–6215.

EPA Regional STEJ Contact Names and Addresses

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Primary Contact: Ronnie Harrington (617) 918–1703, USEPA Region 1, One Congress Street, Suite 1100 (SAA), Boston, MA 02114
Secondary Contact: Ngozi Oleru (617) 918–1120; Pat O'Leary (617) 918–1978

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Primary Contact: Melva Hayden (212) 637–5027 USEPA Region II, 290 Broadway, 26th Floor, New York, NY 10007
Secondary Contact: Doug Roberts (212) 637–3408

Region III—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Primary Contact: Reginald Harris (215) 814–2988, USEPA Region III—(3EC00), 1650 Arch Street, Philadelphia, PA 19103–2029
Secondary Contact: Kathy Duran (215) 814–5441

Region IV—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Primary Contact: Gloria Love (404) 562–9672, USEPA Region IV 61 Forsyth Street, Atlanta, GA 30303

Secondary Contact: Connie Raines (404) 562–9671

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Primary Contact: Ethel Crisp (312) 353–1442, USEPA Region V, 77 West Jackson Boulevard (DM–7J), Chicago, IL 60604–3507

Secondary Contact: Karla Johnson (312) 886–5993

Region VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Primary Contact: Shirley Augurson (214) 665–7401, USEPA Region VI (6E-N), 1445 Ross Avenue, 12th Floor, Dallas, TX 75202–2733

Secondary Contact: Teresa Cooks (214) 665–8145

Region VII—Iowa, Kansas, Missouri, Nebraska

Primary Contact: Althea Moses (913) 551–7649 or 1–800–223–0425, USEPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101

Secondary Contact: Kim Olson (913) 551–7539

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Primary Contact: Marcella Devargas (303) 312–6161, USEPA Region VIII (8ENF–EJ), 999 18th Street, Suite 500, Denver, CO 80202–2466

Secondary Contact: Deldi Reyes (303) 312–6055

Region IX—Arizona, California, Hawaii, Nevada, American Samoa, Guam

Primary Contact: Diane Uribi (415) 744–1597, USEPA Region IX (CMD–6), 75 Hawthorne Street, San Francisco, CA 94105

Secondary Contact: Romel Pascual (415) 744–1212

Region X—Alaska, Idaho, Oregon, Washington

Primary Contact: Mike Letourneau (206) 553–1687, USEPA Region X (CEJ–163), 1200 Sixth Avenue, Seattle, WA 98101

Secondary Contact: Victoria Plata (206) 553–8580

Note: To obtain copies of the appendices referenced in this document, please contact the individuals identified above for a complete application.

Dated: October 25, 1999.

Barry E. Hill,

Director, Office of Environmental Justice.

[FR Doc. 99–28505 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–8]

Science Advisory Board Executive Committee; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee (EC) will conduct two meetings as described below. Both meetings will be held in Conference Room 6013 in the Ariel Rios North Building at the U.S. Environmental Protection Agency (EPA) located at 1200 Pennsylvania Avenue, NW, Washington, DC 20004 (the building entrance is adjacent to the Federal Triangle Metro Stop on 12th Street). For directions and further information concerning the meetings, please contact the individuals given below. The meetings are open to the public; however, seating is limited and available on a first-come basis.

1. Executive Committee Teleconference

The Executive Committee (EC) will hold a public teleconference meeting on Monday, November 22, 1999, between the hours of 11 am–1 pm (Eastern Standard Time). The meeting will be coordinated through a conference call connection located in Room 6013 of the Ariel Rios Building (see above for address). The public is welcome to attend the meeting physically or through telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson at (202) 564–4533, or via e-mail at: <*tillery.priscilla@epa.gov*> by November 18, 1999.

At this meeting, the Executive Committee tentatively plans to review reports from at least two of its Committees/Subcommittee: (a) EC Subcommittee's Review of the "EPA's Per Capita Water Ingestion Estimates for the United States" and (b) Research Strategies Advisory Committee's Review of the Agency's Peer Review Process.

2. Executive Committee Meeting

The Executive Committee (EC) will conduct a public meeting on Monday and Tuesday, November 29–30, 1999. The meeting will convene each day at 8:30 am and will adjourn no later than 5:30 pm (Eastern Standard Time). At this meeting, the EC will receive updates from its Committees and Subcommittees concerning their recent and planned activities. As part of these updates, some Committees will present draft reports for EC review and approval. Tentatively anticipated drafts include, but are not limited to the following:

(a) Executive Subcommittee: Review of the Treatment of Children in EPA's Cancer Risk Assessment Guidelines.

(b) Ecological Processes and Effects Committee: (1) Review of Methodology for Assessing Metals in Sediments; and (2) Review of Biotic Ligand Model for Metals in Water Column.

Other items on the agenda tentatively include, but are not limited to the following:

(c) Discussions with the Deputy Administrator, Assistant Administrator for Research and Development, and Director of the Office of Science and Policy Coordination.

(d) Discussion with Dr. Mark Powell of Resources for the Future regarding his recent publication: "Science at EPA."

(e) Procedural matters, including conflict-of-interest regulations, production of timely reports, interaction with non-Panel members during reviews, and iterative approach to providing advice.

(f) Planning considerations, including further reviews of peer review process, increased involvement of social sciences in SAB activities, and possible participation in multi-agency conference on the impact of the environment on human health.

(g) An extended discussion with Agency leaders about the role of science in the agency's new approaches to environmental protection; e.g., stakeholder processes, place-based projects, Common Sense Initiative, etc.

FOR FURTHER INFORMATION—Any member of the public wishing further information concerning either meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer (DFO) for the Executive Committee, Science Advisory Board (1400A), U.S. EPA, 401 M Street, SW., Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at: <*barnes.don@epa.gov*>. Copies of the draft meeting agendas and the draft reports will be available on the SAB Website *(http://www.epa.gov/sab)* at least one week prior to the meetings.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes (three minutes each and a total time of 15 minutes for teleconferences). Written comments (at least 35 copies)

received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

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 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.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 26, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–28500 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6466–8]

Draft Mercury, Polychlorinated Biphenyls, Alkyl Lead, and Benzo(a)Pyrene and Hexachorobenzene Reports Published in Response to the United States' Commitments in "The Great Lakes Binational Toxics Strategy; Canada—United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes"

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and the opportunity to comment.

SUMMARY: The Great Lakes Binational Toxics Strategy; Canada-United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes (the Strategy), was signed on April 7, 1997. The Strategy set forth a number of challenges to be met on the path toward virtual elimination of the Level I Strategy substances.

In addition, the Strategy identifies a four-step analytical process that Environment Canada and the United States Environmental Protection Agency, in cooperation with their partners, will use in working toward virtual elimination of the Level I Strategy substances. The four step process addresses technical and source-related information about the substances (step 1); the analysis of current regulations, initiatives and programs which manage or control the substances (step 2); the identification of cost-effective options to achieve further reductions (step 3); and the implementation of actions toward the goal of virtual elimination (step 4).

The draft reports on Polychlorinated Biphenyls, and Benzo(a)Pyrene and Hexachorobenzene being made available for public comment relate to steps 1 and 2 of the analytical process. The draft reports on Mercury, and Alkyl Lead relate to steps 1, 2, and 3.

DATES: The preliminary draft reports will be made available to the public by November 1, 1999.

Comment period: Comments on the reports must be submitted no later than December 30, 1999.

ADDRESSES: All of these reports can be found on the internet at the following address: http://www.epa.gov/bns/. Commenters may transmit their comments electronically by following the directions provided on the website, or may send written comments to Dan Hopkins at the following address: U.S. EPA, Great Lakes National Program Office, 77 West Jackson Boulevard, T–16J, Chicago, Illinois, 60604. Comments may also be sent to Mr. Hopkins via facsimile at (312) 886–2737.

FOR FURTHER INFORMATION CONTACT: Additional information on the draft reports, may be obtained by contacting Dan Hopkins by telephone (312) 886–5994, facsimile (312) 886–2737, or by e-mail *hopkins.dan@epa.gov.*

Dated: October 20, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–28347 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6468–1]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Raymark Industries, Inc. Superfund Site; Stratford, CT

AGENCY: Environmental Protection Agency.

ACTION: Extended notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of the purchaser who obtains title to the former Raymark Facility property located in Stratford, Connecticut through the judicial sale process and certain successors in interest for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at the Raymark Industries, Inc. Superfund Site in Stratford, Connecticut.

DATES: Comments must be provided on or before December 1, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214, and should refer to: Agreement and Covenant Not to Sue Re: Raymark Industries, Inc. Superfund Site, Stratford, Connecticut, U.S. EPA Docket No. CERCLA–1–99–0066.

FOR FURTHER INFORMATION CONTACT: Robin Ruhlin, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1784.

SUPPLEMENTARY INFORMATION: This document is an extension of the previous notice published in the **Federal Register**, on Wednesday, September 29, 1999, 64 FR 52505.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed administrative settlement may be obtained in person or by mail from Constance Dewire, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode HBT, Boston, Massachusetts 02214, (617) 918–1346.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk. U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214 (U.S. EPA Docket No. CERCLA 1–99–0066).

Dated: October 25, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

[FR Doc. 99–28544 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–51935; FRL–6390–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of the Toxic Substances Control Act (TSCA), EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 6, 1999 to September 24, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

FOR FURTHER INFORMATION CONTACT: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** -- Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

B. In person. The Agency has established an official record for this action under docket control number OPPTS–51935. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from [September 6, 1999] to [September 24, 1999], consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

IV. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 83 Premanufacture Notices Received From: 09/06/99 to 09/24/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1305	09/07/99	12/06/99	Henkel Corporation	(G) Rheology modifier for coatings, inks and adhesives	(S) Oxirane, (chloromethyl)-, polymer with α-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl), ether with α-(nonylphenyl)-omega-hydroxypoly(oxy-1,2-ethanediyl) (1:2)*

I. 83 Premanufacture Notices Received From: 09/06/99 to 09/24/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1306	09/07/99	12/06/99	CBI	(G) Additive in yarn production	(G) Copolymer of methyl methacrylate, styrene and cyclohexyl maleimide
P–99–1307	09/08/99	12/07/99	CBI	(G) Open non-dispersive use	(G) Polymer modified rosin
P–99–1308	09/08/99	12/07/99	CBI	(G) Open, non-dispersive (resin)	(G) Blocked aliphatic polyisocyanate
P–99–1309	09/07/99	12/06/99	The Dow Chemical Company	(G) Grinding aid	(S) 2-propanol, 1-[bis(2-hydroxyethyl)amino]-*
P–99–1310	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1311	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1312	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1313	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1314	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1315	09/08/99	12/07/99	CBI	(G) Component of coating with open use	(G) Polyol
P–99–1316	09/09/99	12/08/99	CBI	(G) An open non-dispersive use	(G) Rosin modified phenolic resin
P–99–1317	09/09/99	12/08/99	CBI	(G) Open non-dispersive (coatings)	(G) Aliphalic isocyanate
P–99–1318	09/10/99	12/09/99	CBI	(G) Coating component	(G) Substituted bisphenol a derivative
P–99–1319	09/10/99	12/09/99	CBI	(G) Open, non-dispersive (additive)	(G) Poly etherpoly siloxane
P–99–1320	09/13/99	12/12/99	CBI	(G) Polymer precursor	(G) Alkyl polysaccharide derivative
P–99–1321	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1322	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1323	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1324	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1325	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1326	09/10/99	12/09/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, chlorosulfurized
P–99–1327	09/10/99	12/09/99	CBI	(G) Chemical feedstock	(G) Halogenated alkane
P–99–1328	09/13/99	12/12/99	Vianova Resins Incorporated	(S) Additive in automotive oem paint; additive in industrial paint	(G) Modified melamine resin
P–99–1329	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1330	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1331	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1332	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1333	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1334	09/13/99	12/12/99	Harwick Chemical Manufacturing Corporation	(S) Solid plasticizer for rubber	(G) Vegetable oil, sulfurized
P–99–1335	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–1336	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–1337	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate

I. 83 Premanufacture Notices Received From: 09/06/99 to 09/24/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1338	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–1339	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–1340	09/14/99	12/13/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–1341	09/17/99	12/16/99	CBI	(G) Open - non dispersive use	(G) Metallic salt of 2 naphthalene carboxylic acid 4,4′ methylene bis [3-hydroxy
P–99–1342	09/17/99	12/16/99	CBI	(G) Open - non dispersive use	(G) Metallic salt of 2 naphthalene carboxylic acid 4,4′ methylene bis [3-hydroxy
P–99–1343	09/16/99	12/15/99	3M Company	(S) Chemical intermediate	(S) Propanoyl fluoride, 2,2,3,3-tetrafluoro-3-(trifluoromethoxy)-*
P–99–1344	09/16/99	12/15/99	CBI	(S) Ingredient in (fragrance) compounds	(S) Benzenepentanenitrile, beta-methyl*
P–99–1345	09/16/99	12/15/99	3M Company	(S) Chemical intermediate	(S) Propanoyl fluoride, 2,3,3,3-tetrafluoro-2-[1,1,2,2,3,3-hexafluoro-3-(trifluoromethoxy)propoxy]-*
P–99–1346	09/16/99	12/15/99	Sivento Inc.	(S) Anti-graffiti coatings	(S) 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyltriethoxy silane*
P–99–1347	09/16/99	12/15/99	CBI	(S) Ingredient in (fragrance) compounds	(S) Carbonic acid, 2-hydroxyethyl [2-(1-methylethyl)-5-methyl cyclohex-1-yl] ester*
P–99–1348	09/20/99	12/19/99	CBI	(G) Open - non dispersive use	(G) Metallic salt of b-oxynaphthoic acid
P–99–1349	09/17/99	12/16/99	CBI	(G) Coating component	(G) Non-volatile emulsion silicone polyurethane polymer
P–99–1350	09/17/99	12/16/99	Solvay Interox Inc	(S) Cast elastomers; prepolymer for cast elastomers	(S) 2-oxepanone, polymer with alpha.-hydro-.omega.-hydroxypoly(oxy-1,4-butanediyl)*
P–99–1351	09/17/99	12/16/99	CBI	(G) Dispersing resin	(G) Polycarboxylate
P–99–1352	09/17/99	12/16/99	CBI	(G) Dispersing resin	(G) Polycarboxylate
P–99–1353	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Racemic substituted dimethyl zironocene
P–99–1354	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Potassium salt of substituted malonic acid
P–99–1355	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Substituted malonic acid
P–99–1356	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Substituted propionic acid
P–99–1357	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Substituted indene
P–99–1358	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Lithium salt of substituted indene
P–99–1359	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Substituted bis-indenylsilane
P–99–1360	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Lithium salt of substituted bis-indenylsilane
P–99–1361	09/20/99	12/19/99	CBI	(G) Destructive use	(G) Substituted zirconocene dichloride, rac and meso isomer mixture
P–99–1362	09/15/99	12/14/99	Callaway Chemical Company	(S) Fertilizer/macro nutrient	(S) Phosphonic acid, monopotassium salt*
P–99–1363	09/20/99	12/19/99	Hercules Incorporated	(G) Precursor used in the production of a papermaking chemical	(G) Aminopolyamide
P–99–1364	09/20/99	12/19/99	Hercules Incorporated	(G) Papermaking chemical	(G) Aminopolyamide
P–99–1365	09/20/99	12/19/99	CBI	(S) Laminating adhesive	(G) Aromatic polyurethane
P–99–1366	09/20/99	12/19/99	CBI	(G) Chemical intermediate	(G) 4,6-disubstituted pyrimidine
P–99–1367	09/20/99	12/19/99	Percy International ltd.	(S) Modifying resin used in the manufacture of primers/ coatings for plastics substrates.	(S) A polymer of: bayer desmophen c-200; dimethylolpropionic acid; polyoxypropylene diglycidylether; di-*n*-butylamine; isophorone diisocyanate; diethanolamine; meta-tetramethylxylylene diisocyanate; triethylamine; 2-methyl-1,5 pentanediamine*
P–99–1368	09/20/99	12/19/99	CBI	(G) Wax crystal modifier for petroleum and petroleum products	(G) Alpha olefin - maleic anhydride copolymer, alkyl esters
P–99–1369	09/20/99	12/19/99	Wacker Biochem Corporation	(S) Additive for household products	(S) Beta-cyclodextrin, 2-hydroxypropyl ethers*
P–99–1370	09/20/99	12/19/99	CBI	(S) Laminating adhesive	(G) Aromatic polyester polyurethane
P–99–1371	09/21/99	12/20/99	CBI	(S) For uv cure industrial coatings	(G) Nco-acrylate reaction product
P–99–1372	09/21/99	12/20/99	CBI	(S) Colorant for crack detection solutions	(S) 2-naphthalenamine, *n*-(2-ethylhexyl)-1-((3-methyl-4-((3-methylphenyl)azo)phenyl)azo)-*

I. 83 Premanufacture Notices Received From: 09/06/99 to 09/24/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1373	09/23/99	12/22/99	Ricon Resins, Inc.	(S) Adhesives; inks; sealants; coatings for metal, plastic, glass; adhesion promoter	(S) 2-butendioic acid, (2*z*)-, mono[2-[(2-methyl-1-oxo-2 propenyl)oxy]ethyl]ester*
P–99–1374	09/23/99	12/22/99	Dsm Copolymer	(G) Reaction aid in polymer synthesis	(S) Monochlorodiphenylacetic acid ethyl ester*
P–99–1375	09/23/99	12/22/99	BASF Corporation	(S) Plasticizer for pvc	(S) Hexanedioic acid, di C_{7-11} branched and linear alkyl esters*
P–99–1376	09/23/99	12/22/99	GE Silicones	(G) Silicone adhesive	(G) Polydimethylsiloxane resin
P–99–1377	09/23/99	12/22/99	GE Silicones	(G) Silicone adhesive	(G) Polydimethylsiloxane resin
P–99–1378	09/23/99	12/22/99	GE Silicones	(G) Silicone adhesive	(G) Polydimethyldiphenylsiloxane resin
P–99–1379	09/23/99	12/22/99	Ge Silicones	(G) Silicone adhesive	(G) Polydimethyldiphenylsiloxane resin
P–99–1380	09/23/99	12/22/99	CBI	(S) Water and oil repellent finish for clothes of cotton, polyester, and others	(G) Poly-beta-fluoroalkyl acrylate and alkyl acrylate
P–99–1381	09/23/99	12/22/99	CBI	(S) Water and oil repellent finish for clothes of cotton, polyester, and others	(G) Poly-beta-fluoroalkyl acrylate and alkyl acrylate
P–99–1382	09/24/99	12/23/99	CBI	(G) Destructive use	(G) Disubstituted fluorene
P–99–1383	09/24/99	12/23/99	CBI	(G) Destructive use	(G) Methane bridged bis(substituted cyclopentadiene)
P–99–1384	09/24/99	12/23/99	CBI	(G) Destructive use	(G) Lithium salt of disubstituted fluorene
P–99–1385	09/24/99	12/23/99	CBI	(G) Destructive use	(G) Substituted bis cyclopentadienyl metallocene
P–99–1386	09/24/99	12/23/99	CBI	(G) Destructive use	(G) Dimethyl bis(substituted cylopentadienyl) metallocene
P–99–1388	09/24/99	12/23/99	CIBA Specialty Chemicals Corporation	(S) Binder resin for coatings	(G) Styrene acrylic polymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 Test Marketing Exemption Notice Received From: 09/06/99 to 09/24/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–99–0004	09/13/99	10/28/99	Fiber source inc.	(S) Used for optical device manufacture	(S) Sulfonium, (thiodi-4, 1-phenylene) bis [4-(2-hydroxyethoxy)phenyl]-, bis[hexafluorophosphate (1-)] (9ci)*

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 37 Notices of Commencement From: 09/06/99 to 09/24/99

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–0140	09/20/99	08/29/99	(G) Polyepichlorohydrin derivative
P–94–0141	09/20/99	09/01/99	(G) Polyepichlorohydrin diol
P–96–1578	09/14/99	08/17/99	(G) Poly(alkylene oxides), polyester with maleic anhydride and 1,2-propanediol, 2-methyl-1,3-propanediol modified
P–97–0587	09/20/99	07/25/97	(G) Polyurethane adhesive
P–97–0981	09/17/99	09/10/99	(G) Hydro philic aliphatic polyisocyanate
P–98–0648	09/09/99	08/19/99	(G) Substituted heterocyclic alkylamino alkyl benzoic acid ester
P–98–0675	09/20/99	09/01/99	(G) Aqueous amine salt
P–98–1033	09/16/99	08/16/99	(G) Halogen-substituted oxetane
P–98–1127	09/14/99	08/25/99	(G) Isocyanate terminated polyurethane resin
P–98–1129	09/14/99	08/25/99	(G) Isocyanate terminated polyurethane resin
P–98–1131	09/14/99	08/25/99	(G) Isocyanate terminated polyurethane resin
P–99–0042	09/07/99	08/24/99	(G) Aliphatic polyurethane prepolymer

III. 37 Notices of Commencement From: 09/06/99 to 09/24/99—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–99–0111	09/14/99	08/25/99	(G) Isocyanate terminated polyurethane resin
P–99–0112	09/14/99	08/25/99	(G) Isocyanate terminated polyurethane resin
P–99–0175	09/20/99	09/09/99	(G) 1-naphthalenesulfonic acid, substituted-3-[[substituted phenyl]azo]-, salt*
P–99–0200	09/20/99	08/16/99	(G) Fatty acid imidazolium alkyl sulfate
P–99–0310	09/23/99	09/10/99	(G) Vanillin ester
P–99–0334	09/07/99	08/26/99	(S) 2,5-cyclohexadien-1-one, 4-[bis(4-hydroxyphenyl)methylene]*
P–99–0470	09/13/99	08/17/99	(G) Substituted sulfonaphthalenylazo substituted phenylazo substituted phenyl, salt
P–99–0507	09/21/99	09/08/99	(G) Aliphatic polyoxyethylene ethers
P–99–0508	09/21/99	09/08/99	(G) Aliphatic polyoxyethylene ethers
P–99–0526	09/20/99	08/17/99	(G) Blocked isocyanate
P–99–0547	09/20/99	09/09/99	(S) Fatty acids, soya, compounds with 2-(2-aminoethoxy) ethanol*
P–99–0585	09/20/99	08/27/99	(S) Neodecanoic acid, compd. with 2-(2-aminoethoxy)ethanol (1:1)*
P–99–0668	09/13/99	09/03/99	(G) Substituted sulfonyl isocyanate
P–99–0685	09/09/99	08/26/99	(G) Sodium salt of a triazinyl monoazo dyestuff
P–99–0718	09/20/99	09/03/99	(S) 5-nonanol, 4-methyl-*
P–99–0719	09/13/99	08/30/99	(G) Copolymer of acrylic acrylates, methacrylates and acid
P–99–0745	09/07/99	08/30/99	(S) Phosphine, tricyclopenyl*
P–99–0756	09/07/99	08/25/99	(G) Aqueous polyurethane dispersion
P–99–0762	09/08/99	08/26/99	(G) Polyetherdiol polymer with an aliphatic isocyanate and hydroxyethyl methacrylate
P–99–0772	09/07/99	08/31/99	(S) 2-propenoic acid, 2-methyl-, methyl ester, telomer with 1,6-diisocyanatohexane, 2-ethylhexyl 2-propenoate and 2-mercaptoethanol*
P–99–0776	09/23/99	08/25/99	(G) Alkyl methacrylate copolymer
P–99–0796	09/09/99	08/27/99	(S) Carbonic acid, methyl 2-[2-(1-methylethyl)-3-oxazolidinyl]ethyl ester*
P–99–0814	09/13/99	08/20/99	(G) Poly(oxy-1,4-butanediyl), α-hydro-omega-hydroxy-polymer with a substituted alcohol and 1,1′-methylenebis[4-isocyanatocyclohexane], 2-hydroxyethyl acrylate-blocked
P–99–0854	09/20/99	09/07/99	(G) Acrylate copolymer
P–99–0884	09/22/99	09/02/99	(G) Polyurethane prepolymer; polyurethane adhesive

List of Subjects

Environmental protection, Premanufacture notices.

Dated: October 22, 1999.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–28493 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6466–2]

Clean Water Act Class I: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding The Gates Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding The Gates Corporation.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment of an administrative penalty against The Gates Corporation. Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing administrative penalties for violations of the Act. EEA may issue such orders after filing a Complaint commencing a Class I penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class I proceedings are conducted under subpart I of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 64 FR 40138, July 23, 1999 (effective August 23, 1999). The procedures by which the public may submit written comments on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class I order is thirty (30) days after issuance of public notice.

On September 29, 1999, EPA commenced the following Class I proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7630, the following complaint: In the Matter of The Gates Corporation; EPA Docket No, CWA–7–99–0018.

The Complaint proposes a penalty of Eleven Thousand Dollars ($11,000) for the discharge of wastewater with a pH factor of less than 5 s.u. to the City of Versailles, Missouri publicly owned treatment plant (POTW) on or about November 11, 1998, and for causing pass though of low pH effluent from the City of Versailles POTW in violation of the city's permit on or about November 12, 1998, in violation of section 307(d) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA

Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by The Gates Corporation is available as part of the administrative record subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: October 8, 1999.

Diane K. Callier,

Acting Regional Administrator, Region 7.

[FR Doc. 99–28463 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6467–6]

Public Water System Supervision Program Revision for the State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved Public Water System Supervision Program. South Carolina has adopted drinking water regulations requiring consumer confidence reports from all community water systems. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by December 1, 1999, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 1, 1999, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on December 1, 1999. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

South Carolina Department of Health and Environmental Control, Bureau of Water, 2600 Bull Street, Columbia, South Carolina 29201

Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Janine Morris, EPA Region 4, Drinking Water Section at the Atlanta address given above (telephone 404–562–9480).

Authority: (Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations).

Dated: October 21, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–28501 Filed 10–29–99; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 25, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 3, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–XXXX.

Title: Public Notice—Medical Telemetry Equipment Operating in the 450–460 MHz Band.

Type of Review: New collection.

Respondents: Business or not for profit institutions.

Number of Respondents: 20.

Estimated Hours Per Response: 8.

Frequency of Response: Recordkeeping; one time reporting requirement.

Estimated Total Annual Burden: 160 hours.

Total Annual Cost: $2,160.00.

Needs and Uses: The Commission released a public notice on October 20, 1999, requesting that parties operating medical telemetry equipment in the 450–460 MHz Band assist the Commission by providing certain information on their operation. Our equipment authorization records show that the majority of medical telemetry equipment operating under Part 90 is authorized in the 460–470 MHz portion of the PLMRS bands, and that very little operates in the 450–460 MHz portion of the band. We are requesting that parties operating medical telemetry equipment in the 450–460 MHz band provide certain information on their operation to the Commission. This information could help prevent serious interference problems in the future.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28484 Filed 10–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3140–EM]

California; Amendment No. 5 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of California, (FEMA–3140–EM), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 1, 1999:

Humboldt, Napa and Yuba Counties for emergency protective measures, including the limited removal of debris which poses a health and safety hazard to the general public, as authorized under Title V. This assistance excludes regular time costs for subgrantees regular employees.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–28473 Filed 10–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1306–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1306–DR), dated October 20, 1999, and related determinations.

EFFECTIVE DATE: October 20, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 20, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Hurricane Irene beginning on October 14, 1999, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I. therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Rodham of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Brevard, Broward, Collier, Dade, Glades, Hendry, Highlands, Indian River, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Polk, St. Lucie, Seminole, and Volusia Counties for Individual Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–28471 Filed 10–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1306–DR]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1306–DR), dated October 20, 1999, and related determinations.

EFFECTIVE DATE: October 24, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 24, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis

Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–28472 Filed 10–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1292–DR]

North Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1292–DR), dated September 16, 1999, and related determinations.

EFFECTIVE DATE: October 21, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is re-opened as a result of the continued flooding caused by Hurricanes Floyd and Irene in the State of North Carolina. The incident period is September 15, 1999, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–28469 Filed 10–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

NAME: Federal Interagency Committee on Emergency Medical Services (FICEMS).

DATE OF MEETING: December 2, 1999.

PLACE: Commissioner's Conference Room, room 1129, Crystal Mall #4, 1941 Jefferson Davis Highway, in Arlington, Virginia 22202.

TIME: 10:30 a.m.

PROPOSED AGENDA: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; presentation of member agency reports; reports of other interested parties; briefing on Emergency Medical Services Response Training Programs for Weapons of Mass Destruction Incidents; briefing on United States Fire Administration Emergency Medical Services Team.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact William Troup, United States Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, (301) 447-1231, on or before Monday, November 29, 1999.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on March 2, 2000.

Carrye B. Brown,

U.S. Fire Administrator.

[FR Doc. 99–28468 Filed 10–29–99; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 16, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Russell James Guidry, Jr.; James Marvin Cunningham; Jack Badoui Koury; Ulysses Joseph Prevost; and Roland Joseph Guidry, all of Rayne, Louisiana; to retain voting shares of Security Acadia Bancshares, Inc., Rayne, Louisiana, and thereby indirectly retain voting shares of Rayne State Bank & Trust Company, Rayne, Louisiana.

Board of Governors of the Federal Reserve System, October 27, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28546 Filed 10–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 November 26, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. China Trust Capital A/S, Denmark; to become a bank holding company by acquiring shares of China Trust Capital B.V., Netherlands, and thereby indirectly acquiring Chinatrust Bank, Torrance, California. China Trust Holdings N.V., Curacao, Netherlands Antilles, will control China Trust Capital A/S, Denmark, and its subsidiaries, upon its formation.

Board of Governors of the Federal Reserve System, October 27, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28545 Filed 10–29–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research; DHHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be held on Friday, November 5, 1999, from 8:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland, 20852.

FOR GENERAL INFORMATION CONTACT: Jackie Eder, Coordinator of the Advisory Council, at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–6662. For press-related information, please contact Karen Migdail at 301/594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6662 no later than November 4, 1999.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Health Care Policy, Research, and Evaluation. In accordance with its statutory mandate, the Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members. Donald M. Berwick, M.D., the Council chairman, will preside.

II. Agenda

On Friday, November 5, 1999, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Administrator, AHCPR, will present the status of the Agency's current research, programs and initiatives. Tentative agenda items include issues on future programs and initiatives, information technology, health care errors, and role of qualitative methods in health services research. The official agenda will be available to AHCPR's website at *www/ahcpr.gov* no later than October 20, 1999. The meeting will adjourn at 4:00 p.m.

Dated: October 26, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–28536 Filed 10–29–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community/Tribal Subcommittee and the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meetings

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) announces the following subcommittee and committee meetings.

Name: Community/Tribal Subcommittee (CTS).

Times and Dates: 8:30 a.m.–4 p.m., November 16, 1999; 9 a.m.–5 p.m., November 17, 1999.

Place: Sheraton/Buckhead Hotel, 3405 Lenox Road, N.E., Atlanta, Georgia 30326.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 60 people.

Purpose: This subcommittee will bring to the Board of Scientific Counselors advice and citizen input, as well as recommendations on community and tribal programs, practices, and policies of the Agency. The subcommittee will report directly to the Board of Scientific Counselors.

Matters To Be Discussed: Agenda items include an update on Action Items from previous meetings; discussion of suggested meeting procedures; discussion of Revised Draft Roles, Functions, and Operational Guidelines; research agenda building update; health technical assistance grant mechanism; and an overview of the Agency's activities regarding chemical mixtures. The CTS will discuss public health assessment and sensitivity training; CTS proposals, and recommendations and responses to ATSDR.

Name: Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry.

Times and Dates: 8:30 a.m.–5 p.m., November 18, 1999; 8:30 a.m.–12 p.m., November 19, 1999.

Place: Sheraton/Buckhead Hotel, 3405 Lenox Road, N.E., Atlanta, Georgia 30326.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 60 people.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Secretary; the Assistant Secretary for Health; and the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize. In addition, the Board recommends research programs and conference support for which the Agency seeks to make grants to universities, colleges, research institutions, hospitals, and other public and private organizations.

Matters To Be Discussed: Agenda items will include an update on building ATSDR's research agenda; an overview of current research activities; an update on NIEHS and EPA Superfund research programs; an update on NIOSH and NCEH research programs. The BSC will discuss ATSDR plans and progress; research and plans for other agencies; potential for collaborative research; and additional needs for environmental public health research. The CTS will discuss the Community/Tribal Subcommittee update, Operational Guidelines and recommendations. ATSDR staff will provide program updates on the expert panel review

of the PCB toxicological profile, Paducah Gaseous Diffusion Plant, and mercury in vaccines.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

An unavoidable administrative delay prevented meeting the 15 day publication requirement.

CONTACT PERSON FOR MORE INFORMATION: Robert F. Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

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: October 27, 1999.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–28582 Filed 10–29–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0096]

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.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Emergency and Foreign Hospital Services—Beneficiary Statement in Canadian Travel Claims and Supporting Regulations in 42 CFR, Section 424.123.

Form No.: HCFA–R–0096 (OMB# 0938–0484).

Use: Payment may be made for certain Part A inpatient hospital services and Part B outpatient hospital services provided in a nonparticipating U.S. or foreign hospital when services are necessary to prevent the death or serious impairment of the health of the individual. In these situations, the threat to the life or health of the individual necessitates the use of the most accessible hospital available and equipped to furnish such services. Section 3698.4, requires a beneficiary statement indication that after a medical emergency occurred, the beneficiary was traveling between Alaska and another State through Canada by the most direct route without unreasonable delay to acquire medical care.

Frequency: On occasion.

Affected Public. Individuals or Households.

Number of Respondents: 1,100.

Total Annual Responses: 1,100.

Total Annual Hours: 275.

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: October 21, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–28514 Filed 10–29–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Healthcare Integrity and Protection Data Bank: Announcement of Opening Date for Reporting and Self-Query Fee

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

In accordance with final regulations implementing the Healthcare Integrity and Protection Data Bank (HIPDB) published in the **Federal Register** on October 26, 1999 (64 FR 57740), the Office of Inspector General (OIG) is announcing that the data bank will become operational for purposes of reporting information on November 22, 1999. In addition, the Department now is exercising its authority to impose a fee for self-queries to the data bank and is announcing a ten dollar fee for health care practitioners, providers or suppliers who request information about themselves (self-queries) from the HIPDB.

1. Reportable Actions

All reportable actions taken since August 21, 1996, the date of passage of the HIPDB's authorizing statute, section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, must be reported to the HIPDB beginning November 22, 1999—the opening operational date for the data bank. To submit reports, registered entities must use the HIPDB web site at www.npdb-hipdb.com. Specific guidelines for reporting also can be found on this web site.

2. Self-query User Fee Amount

In conjunction with the opening of the HIPDB for reporting and as part of its obligations under the Privacy Act, the Department is offering at this time self-querying to health care practitioners, providers and suppliers.

Section 1128E(d)(2) of the Social Security Act, as added by section 221(a) of HIPAA, specifically authorizes the establishment of fees for the costs of processing requests for disclosure and for providing such information, and the final regulations at 45 CFR part 61 set forth the criteria and procedures for information to be reported to and disclosed by the HIPDB. The Act requires that the Department recover the full costs of operating the HIPDB through user fees. In determining any changes in the amount of the user fee, the Department is employing the criteria set forth in * 61.13(b) of the HIPDB regulations.

Specifically, § 61.13(b) states that the amount of each fee will be determined based on the following criteria:

- direct and indirect personnel costs;
- physical overhead, consulting, and other indirect costs including rent and depreciation on land, buildings and equipment;
- agency management and supervisory costs;
- costs of enforcement, research and establishment of regulations and guidance;
- use of electronic data processing equipment to collect and maintain information—the actual cost of the service, including computer search time, runs and printouts; and
- any other direct or indirect costs related to the provision of services.

The HIPDB incurs substantial labor costs for manual data input, sorting and responding to calls for Helpline assistance in order to process self-queries, as well as substantial postage and packaging costs for mailing self-query results to practitioners. As a result, based on an analysis of the costs of processing self-queries, the Department is establishing a ten dollar fee for each self-query.

In order to minimize administrative costs, the Department will accept payment for self-queries only by credit card. The HIPDB accepts Visa, MasterCard, and Discover. This fee is effective beginning November 19, 1999.

The Department will continue to review the user fee periodically, and will revise it as necessary. Any changes in the fee and its effective date will be announced in the **Federal Register**. We will also announce the fee structure and the opening date for queriers *submitted by authorized entities* through a separate **Federal Register** notice to be published shortly.

Dated: October 26, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99–28497 Filed 10–29–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The Meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL HUMAN GENOME RESEARCH INSTITUTE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.

Date: November 8–10, 1999.

Open: November 8, 1999, 6:00 p.m. to 6:30 p.m.

Agenda: To discuss program issues.

Place: Airlie House, 6809 Airlie Road, Warrenton, VA 20187.

Closed: November 8, 1999, 6:30 pm to Adjournment on November 10, 1999.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Airlie House, 6809 Airlie Road, Warrenton, VA 20187.

Contact Person: Claire Rodgaard, Assistant to the Scientific Director, Division of Intramural Research, Office of the Director, National Human Genome Research Institute, 45 Convent Drive, Building 49, Room 4A06, Bethesda, MD 20892, 301–435–5802.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28451 Filed 10–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 16–17, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael J Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–3367.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 22, 1999.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Asikiya Walcourt, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6138, MSC 9606, Bethesda, MD 20892–9609, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 2, 1999.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 6, 1999.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.

Contact Person: Jean G. Noronha, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28450 Filed 10–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biomedical Library Review Committee, November 2, 1999, 8:30 a.m. to November 3, 1999, 12 p.m., National Library of Medicine, 8600 Rockville Pike, board room, Bethesda, MD, 20894 which was published in the **Federal Register** on September 29, 1999, Vol. 64, No. 188.

The Biomedical Library Review Meeting is scheduled to be held November 1, 1999, 2:30 pm to November 3, 1999, 12:00 pm. An Orientation Session for new members on November 1, 1999, 2:30 pm to 5:00 pm has been added to the agenda. The meeting is partially Closed to the public.

Dated: October 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28452 Filed 10–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 3–5, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Square, 2000 N Street, NW, Washington, DC 20036.

Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 535–1278.

This notice is being published less than 15 days prior to the meeting due to the timing limitations, imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparable Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28449 Filed 10–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 1999.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eugene Vigil, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15–16, 1999.

Time: 7:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Cheryl M. Corsaro, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045 corsaroc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 1999.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Julian L. Azorlosa, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18–19, 1999.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18–19, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., NW, Washington, DC 20007.

Contact Person: Patricia H. Hand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18–19, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Genetic Sciences Initial Review Group, Biological Sciences Subcommittee 1.

Date: November 18–19, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street NW, Washington, DC 20037.

Contact Person: Nancy Pearson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18, 1999.

Time: 11:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18, 1999.

Time: 1:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18–19, 1999.

Time: 1:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipe@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18, 1999.

Time: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7618, Bethesda, MD 20892, (301) 435–1169, (301) 435–1169, dowellr@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 19, 1999.

Time: 2:00 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18, 1999.

Time: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 22–23, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel-Harbor Building, 1000 29th Street NW, Washington, DC 20007.

Contact Person: Ron Manning, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 22, 1999.

Time: 8:30 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892.

Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 22, 1999.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 22, 1999.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lawrence N. Yager, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, 301–435–0903, yagerl@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National institutes of Health, HHS)

Dated: October 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28453 Filed 10–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Ballast Water Effectiveness and Adequacy Criteria Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the third meeting of the Ballast Water Effectiveness and Adequacy Criteria Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Committee meeting will be held 10 am to 4 pm, Thursday, November 18, 1999.

ADDRESSES: The meeting will be held at the National Oceanic and Atmospheric Administration (NOAA) complex, SSMC–IV, Science Center (first floor), 1305 East-West Highway, Silver Spring, Maryland.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance (ANS) Species Task Force, at 703–358–2308 or by e-mail at: sharon_gross@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Ballast Water Program Effectiveness and Adequacy Criteria Committee. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Committee was established in 1997 to establish and periodically

resolve criteria for assessing the effectiveness and adequacy of the national ballast water management program in reducing the introduction and spread of nonindigenous species. The ANS Task Force is required to develop criteria for determining the adequacy and effectiveness of the voluntary ballast water management guidelines and subsequent regulations promulgated by the U.S. Coast Guard. The focus of this meeting will be to review and discuss draft discussion papers on compliance and effectiveness criteria and review the timeframe for developing the criteria and providing recommendations to the ANS Task Force.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: October 26, 1999.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director-Fisheries.

[FR Doc. 99–28459 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

New Prices for USGS Map Products

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: The U.S. Geological Survey (USGS) will implement a new price structure for map products on November 1, 1999.

The USGS will raise the handling fee for all product orders to $5.00 per order. International orders will include a $20.00 shipping fee plus the $5.00 handling fee. All international orders exceeding 50 items will be charged actual shipping costs. The new price structure for the USGS published maps is described below.

(1) The price for the USGS Primary Series topographic quadrangle maps (7.5 minute—1:24,000, 1:25,000, 1:20,000; 7.5 × 15 minute—1:25,000, 1:63,360 scales) will remain $4.00 per sheet.

(2) The price for National Earthquake Information Center (NEIC) maps being a private sector copyright will be $10.00 per sheet.

(3) The price for all other map titles and scales (including 1:100,000-scale series, 1:250,000-scale series and small scale topographic maps, as well as thematic maps) will be $7.00 per sheet.

(4) Prices for maps published by other federal agencies and sold by the USGS may vary.

Unlike the 1995 price change to $4.00 for all maps regardless of size or scale, the new price structure is designed to reflect the higher publishing and distribution costs for thematic and small-scale maps while maintaining the $4.00 charge for the Primary Series maps. These changes are consistent with the guidance contained in the Office of Management and Budget Circular A–130, which permits government agencies to recover only reproduction and distribution costs from the sales of their products.

For more information about maps or other USGS products and series, visit any Earth Science Information Center, call 1–888–ASK–USGS, Email: *esicmail@usgs.gov*, or use the fax-on-demand system, which is available 24 hours a day at 703–648–4888. The USGS WWW home page address is *http://www.usgs.gov*.

As the Nation's largest water, earth and biological science and civilian mapping agency the USGS works in cooperation with more than 2,000 organizations across the country to provide reliable, impartial scientific information to resource managers, planners, and customers. This information is gathered in every state by USGS scientists to minimize the loss of life and property from natural disasters, contribute to sound economic and physical development of the nation's natural resources, and enhance the quality of life by monitoring water, biological, energy, and mineral resources.

This press release and in-depth information about USGS programs may be found on the USGS home page: *http://www.usgs.gov*. To receive the latest USGS news releases automatically by email, send a request to *listproc@listserver.usgs.gov*. Specify the listserver(s) of interest from the following names: water-pr: geologic-hazards-pr; biological-pr; mapping-pr; products-pr; lecture-pr. In the body of the message write: subscribe (name of listserver) (your name). Example: subscribe water-pr joe smith.

Dated: October 21, 1999.

Dan Cavanaugh,

Acting Chief, National Mapping Division.

[FR Doc. 99–27999 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

New Prices for USGS Map Separates

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: The U.S. Geological Survey (USGS) will implement a new price structure for map separates on November 1, 1999. USGS map separate products are copies of the film positives or negatives used in the USGS published map production process. Prices for this product line have not been revised since April 1, 1984.

Prior to the November 1 price change, a customer had to order and pay for each map separate individually. Now, the USGS will offer two pricing options, standard and custom. The standard product will be a full set of final combined negatives for each map title. Each set will cost $180. Customers may still purchase individual separates as custom orders using the following price structure: The base price for a custom product is $100 per order. Added to this base price is a $59 charge per color separate. A customer may add more than one color group on a separate for an additional charge of $9 each.

All map separate orders received or postmarked before November 1, 1999, will be subject to the current ordering and pricing structure. All map separate orders received on or after November 1, 1999, will be offered according to the new ordering and pricing structure. The handling fee for all product orders will be $5.

As the Nation's largest water, earth and biological science and civilian mapping agency the USGS works in cooperation with more than 2,000 organizations across the country to provide reliable, impartial scientific information to resource managers, planners, and customers. This information is gathered in every state by USGS scientists to minimize the loss of life and property from natural disasters, contribute to sound economic and physical development of the nation's natural resources, and enhance the quality of life by monitoring water, biological, energy, and mineral resources.

This press release and in-depth information about USGS programs may be found on the USGS home page: *http:www.usgs.gov*. To receive the latest USGS news release automatically by email, send a request to *listproc@listserver.usgs.gov*. Specify the listserver(s) of interest from the

following names: water-pr: geologic-hazards-pr; biological-pr; mapping-pr; products-pr; lecture-pr. In the body of the message write: subscribe (name of listserver) (your name). Example: subscribe water-pr joe smith.

Dated: October 21, 1999.

Dan Cavanaugh,

Acting Chief, National Mapping Division.

[FR Doc. 99–28000 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–AG ; IDI–18881 C]

Termination of Desert Land Entry and Carey Act Classifications and Opening Order; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a suitable Desert Land Entry and Carey Act Classification on 15 acres and a non-suitable Desert Land Entry and Carey Act Classification on 5 acres, so the land can be patented under the Recreation and Pubic Purposes Act (Act of June 14, 1926, as amended).

EFFECTIVE DATE: November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Catherine D. Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3863.

SUPPLEMENTARY INFORMATION: On May 16, 1982, 15 acres were classified suitable for entry, and 5 acres were classified unsuitable for entry under the authority of the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321, et. seq.) and the Carey Act of August 18, 1894 (28 Stat. 422), as amended (43 U.S.C. 641 *et seq.*). The classifications are hereby terminated and the segregation for the following described lands are hereby terminated:

T. 6 S., R.5 E., B.M.
Section 26, W½SW¼NW¼NW¼, NW¼SW¼NW¼.
Section 27, E½NE¼SE¼NE¼.

The area described above aggregates 20 acres in Owyhee County.

At 9:00 a.m. on November 1, 1999, the Desert Land Entry and Carey Act classification identified above will be terminated. The lands will remain closed to location and entry under the public land laws and the general mining laws, as the lands are currently segregated under the Recreation and Public Purposes Act.

Dated: October 26, 1999.

Cathie Foster,

Acting Branch Chief, Lands and Minerals.

[FR Doc. 99–28521 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1430–00; CACA–39853]

Notice of Extension of Public Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the public comment period for the Proposed Indian Pass Withdrawal is extended.

DATES: Comments must be received by the new deadline of December 1, 1999 at the address below.

FOR FURTHER INFORMATION CONTACT: Lynda Kastoll, BLM, El Centro Field Office, 1661 So. 4th Street, El Centro, CA 92243, (760) 337–4421.

SUPPLEMENTARY INFORMATION: On October 26, 1998, a petition was approved allowing the BLM to file an application to withdraw 9,360.74 acres of public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The lands have been and will remain open to the operation of the mineral leasing, geothermal leasing, and material sales laws. No private lands or valid existing mineral rights would be affected by the proposed withdrawal. The purpose of the proposed withdrawal is to protect the archaeological and cultural resources in the Indian Pass area. Public comments were solicited at the time of the original publication (63 FR 58752, November 2, 1998); and again upon publication of the Notice of Public Meeting (64 FR 42960, August 6, 1999). In response to public requests, the BLM decided to provide more time for public comments. The new deadline for public comment is now extended to December 1, 1999.

Dated: October 26, 1999.

Greg Thomsen,

Field Manager.

[FR Doc. 99–28474 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–080–1430–ET; NMNM–102308 & NMNM–103446]

Notice of Public Meeting; Proposed Withdrawals for Cave Protection Area; New Mexico

AGENCY: Bureau of Land Management, Interior, and Department of Agriculture, Forest Service.

ACTION: Notice.

SUMMARY: This notice announces the time and place for a public meeting that will provide an opportunity for public involvement regarding the Department of the Interior and the Department of Agriculture's proposed withdrawals for a cave protection area, Eddy County.

DATES: December 7, 1999.

FOR FURTHER INFORMATION CONTACT: Bobbe Young, BLM Carlsbad Field Office, P.O. Box 1778, Carlsbad, NM 88220, 505–234–5963 or Johnny Wilson, Lincoln National Forest, 505–434–7230.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a public meeting will be held to provide an opportunity for public involvement regarding the applications by the Departments of Interior and Agriculture for land withdrawals for a cave protection area. The notice of Proposed Withdrawals were published in the **Federal Register** 64 FR 18932–18933, April 16, 1999, 64 FR 24713, May 7, 1999 (correction), 64 FR 25063, May 10, 1999, and 64 FR 185, September 24, 1999.

The meeting will be held on Tuesday, December 7, 1999, to the Pecos River Conference Center, Room 3, 701 N. Muscatel, Carlsbad, NM. An open house will begin at 4:00 p.m. and continue until 5:00 p.m. The purpose of the open house is for people to gather information on the proposed land withdrawals and ask questions. Anyone interested in speaking at the formal public hearing will sign up at this time or can sign up prior to this at the Carlsbad Field Office at 620 E. Greene St., Carlsbad, NM 88220. A formal public hearing will begin at 7:00 p.m. and continue until 9:00 p.m. People interested in the proposed land withdrawals will have the opportunity to read or submit written statements or remarks. All comments must be submitted in written form for the record. Reading of comments will be limited to 5 minutes or less.

Dated: October 22, 1999.

Leslie A. Theiss,

Field Manager.

[FR Doc. 99–28515 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the Oakland Museum of California, Oakland, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Oakland Museum of California, Oakland, CA.

A detailed assessment of the human remains was made by Oakland Museum of California professional staff in consultation with representatives of the Klamath Indian Tribe of Oregon.

At an unknown date, human remains representing one individual was recovered from an unknown location within Siskiyou County, CA by person(s) unknown; and are currently in the collections of the Oakland Museum of California. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology and geographic location, this individual has been identified as Native American of possible Modoc or Shasta affiliation. Historic documents, ethnographic sources, and oral history indicate that Klamath and Modoc peoples have occupied the area of south-central Oregon and northeastern California, including Siskiyou County, CA since precontact times.

Basedon the above mentioned information, officials of the Oakland Museum of California have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Oakland Museum of California have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Klamath Indian Tribe of Oregon.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon and the Modoc Tribe of Okalahoma. Representives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Ms. Carey Caldwell, Chief Curator of History, Oakland Museum of California, 1000 Oak Street, Oakland, CA 94607–4892; telephone: (510) 238–3842, before December 1, 1999. Repatriation of the human remains to the Klamath Indian Tribe of Oregon may begin after that date if no additional claimants come forward.

Dated: October 18, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–28289 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items in the Possession of the State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10(a)(3), of the intent to repatriate cultural items in the possession of the State Historical Society of Wisconsin, Madison, WI which meet the definition of "sacred object" and "object of cultural patrimony" under Section 2 of the Act.

The two cultural items consist of one brass kettle water drum and one carved gourd rattle with a wooden handle.

In 1958, this drum and rattle were purchased by the State Historical Society of Wisconsin, along with other related objects, from Mr. Sam Blowsnake (Carley) of Linden Station, WI.

Consultation evidence presented by representatives of the HoChunk Nation of Wisconsin confirms that both these cultural items are used in traditional peyote ceremonies of the Native American Church. Representatives of the HoChunk Nation have also stated that these items are needed by traditional religious leaders for the practice of traditional Native American religion by their present-day adherents. Representatives of the HoChunk Nation have also indicated that these items are owned communally and no individual had the right to sell or otherwise alienate these items.

The one cultural item consists of a pipe with stem.

In 1922, this pipe was donated to the State Historical Society of Wisconsin by W.J. Langdon of Sumner, WA. Associated documentation state that this pipe is the "Pipe used by the Wisconsin Winnebago chief, Yellow Thunder (Wau-kaun-chah-zee-kah)."

Consultation evidence presented by representatives of the HoChunk Nation of Wisconsin confirms that this is the Yellow Thunder pipe used in traditional lodge ceremonies. Representatives of the HoChunk Nation have also stated that this item is needed by traditional religious leaders for the practice of traditional Native American religion by their present-day adherents.

Based on the above-mentioned information, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2(d)(3), these three cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2(d)(4), these two cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Lastly, officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these items and the HoChunk Nation of Wisconsin.

This notice has been sent to officials of the HoChunk Nation of Wisconsin and the Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Ms. Jennifer Kolb, Director, Museum Archeology Program, State Historical Society of Wisconsin, 816. State Street, Madison, WI 53706; telephone (608) 264–6560; e-mail: jlkolb@mail.shsw.wisc.edu, before December 1, 1999. Repatriation of these objects to the HoChunk Nation of Wisconsin may begin after that date if no additional claimants come forward.

Dated: October 21, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–28290 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of a Plan of Operations and Environmental Assessment for Two Existing Natural Gas Wells Submitted by Momentum Operating Company, Inc., Lake Meredith National Recreation Area, Hutchinson County, TX

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Momentum Operating Company, Inc. a Plan of Operations for the continuing operation of two natural gas wells located at Lake Meredith National Recreation Area, Hutchinson County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith National Recreation Area, 419 E. Broadway, Fritch, Texas. Copies are available, for a duplication fee, from the Superintendent, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, Texas 79306–1460.

If you wish to comment, you may submit comments by mailing them to the post office address provided above, or you may hand-deliver comments to the park at the street address provided above. Our practice is to make comments, including names and home addresses of responders, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the decision-making record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the decision-making record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: October 19, 1999.

Laurant Pingree,

Superintendent, Lake Meredith National Recreation Area.

[FR Doc. 99–28507 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Medical Child Support Working Group

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the sixth and seventh meetings of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

DATES: The sixth meeting of the MCSWG will be held on Wednesday, November 17, 1999 and on Thursday, November 18, 1999, from 8:30 a.m. to approximately 6 p.m., and on Friday, November 19, 1999 from 8:30 a.m. to approximately noon. The seventh meeting of the MCSWG will be held on Monday, December 13, 1999 and on Tuesday, December 14, 1999, from 8:30 to approximately 6 p.m.

ADDRESSES: Both meetings will be held in the Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, N.W., Washington, DC 20037, telephone number (202) 955–6400. All interested parties are invited to attend these public meetings. Seating may be limited and will be available on a first-come, first-serve basis. Persons needing special assistance, such as sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202) 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register**. However, it is expected these will be the last two meetings.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FACA), notice is given of two meetings of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (P.L. 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under proposed regulations; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

Agenda

The agenda for these meetings includes a discussion of the issues to be included in the MCSWG's report to the Secretaries containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999, meeting the MCSWG formed four (4) subcommittees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At the next two meetings (August, 1999 and October, 1999), the subcommittees presented their draft recommendations to the full MCSWG for further discussion and consideration. At the November, 1999, meeting the four subcommittees will present additional issues and amended recommendations to the full MCSWG for discussion and consideration. At the December, 1999, meeting the MCSWG will discuss the recommendations in their report to the Secretaries.

Public Participation

Members of the public wishing to present oral statements to the MSCWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DOL, these documents will be available at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Questions regarding the availability of documents from DOL should be directed to Ms. Ellen Goodwin, Plan Benefits Security Division, Office of the Solicitor, Department of Labor (telephone (202) 219–4600, ext. 119). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Group, as shown above.

Signed at Washington, DC, this 26th day of October, 1999.

Richard McGahey,

Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 99–28508 Filed 10–29–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. Pursuant to NARA Bulletin 99–04, agencies must submit schedules for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before December 16, 1999. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved sched ules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML),

National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

In the past, NARA approved the disposal of electronic copies of records created using electronic mail and word processing via General Records Schedule 20, Items 13 (word processing documents) and 14 (electronic mail). However, NARA has determined that a different approach to the disposition of electronic copies is needed. In 1998, the Archivist of the United States established an interagency Electronic Records Work Group to address this issue and pursuant to its recommendations, decided that agencies must submit schedules for the electronic copies of program records and administrative records not covered by the GRS. On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which tells agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component, and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: Name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Federal Communications Commission, Office of Engineering and Technology (N9–173–00–1, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that relate to the development and administration of policies and programs for the gathering of information on telecommunication techniques and equipment, testing and certification of new equipment, and conducting studies on terrestrial and space communications. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. NC1–173–82–3, N1–173–87–4, N1–173–88–4, N1–173–92–1, and N1–173–94–1.

2. Federal Communications Commission, Mass Media Bureau (N9–173–00–2, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that relate to the development of regulations for mass media broadcast services. Included are electronic copies of records pertaining to such matters as budget proposals, educational broadcasting, station interference complaints, frequency coordination, bulk mailings, broadcast complaints, network affiliation agreements, rulemaking proceedings, station renewals and deletions, dismissed applications, and returned applications. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. NC1–173–79–3, NC1–173–85–5, N1–173–86–2, N1–173–89–1, N1–173–98–2, N1–173–98–3, and N1–173–98–4.

3. National Aeronautics and Space Administration, Agency-wide (N9–255–00–1, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to organizational and administrative matters. Included are electronic copies of records pertaining to such subjects as emergency planning, activities of committees and boards, legislation, releases, records management, guard services, safety, health, and standards of conduct. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. N1–255–90–8, N1–255–92–4, and N1–255–94–1, and in Schedule 1 of the NASA Records Retention Schedules.

4. National Aeronautics and Space Administration, Agency-wide (N9–255–00–2, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to legal and technical matters. Included are electronic copies of records pertaining to the management and operation of

NASA's legal and patent functions and of NASA's scientific and technical information programs, including technology utilization offices. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Record-keeping copies of these files are included in Disposition Job Nos. N1–255–94–1 and N1–255–94–3, and in Schedule 2 of the NASA Records Retention Schedules.

5. National Aeronautics and Space Administration, Agency-wide (N9–255–00–3, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to human resources. Included are electronic copies of records pertaining to such subjects as interagency personnel agreements, manpower surveys and reports, civilian service emblems, Ph.D. theses, training, awards, publicity, and monetary benefits. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. N1–255–89–4, N1–255–92–10, N1–255–92–16, and N1–255–92–11, and in Schedule 3 of the NASA Records Retention Schedules.

Dated: October 21, 1999.

Michael J. Kurtz

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–28454 Filed 10–29–99; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580–MLA; ASLBP No. 00–772–01–MLA]

Fansteel, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.1201 and 2.1207 of Part 2 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Fansteel, Inc. (Muskogee, Oklahoma Facility)

The hearing, if granted, will be conducted pursuant to 10 CFR Part 2, Subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted by the Attorney General of the State of Oklahoma. The request was filed in response to a notice of consideration by the Nuclear Regulatory Commission of an amendment request of Fansteel, Inc., for construction of a containment cell at the Fansteel Facility in Muskogee, Oklahoma. The notice of the amendment request was published in the **Federal Register** at 64 FR 49,823 (Sept. 14, 1999).

The Presiding Officer in this proceeding is Administrative Judge Thomas S. Moore. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judge Moore and Judge Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Thomas S. Moore, Presiding Officer. Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 26th day of October 1999.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–28533 Filed 10–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on November 18, 1999, Room T–2B1, 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, November 18, 1999—8:30 a.m.–12:00 Noon

The Subcommittee will discuss the staff's proposed shutdown risk insights report and efforts to develop a low-power and shutdown risk program. 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, its consultants, 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. Michael T. Markley (telephone 301/415–6885) 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: October 26, 1999.

Richard P. Savio,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–28534 Filed 10–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–9001 (which should be mentioned in all correspondence concerning this draft guide), is a proposed Revision 1 of Regulatory Guide 9.3 and is titled "Information Needed for an Antitrust Review of Initial Operating License Applications for Nuclear Power Plants." This proposed revision is being developed to identify the type of information that the NRC staff considers germane for a decision as to whether a second antitrust review is required at the initial operating license stage.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by January 14, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://ruleforum.llnl.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about the draft guide and the related documents, contact Mr. M.J. Davis at (301) 415–1016; e-mail MJD1@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 20th day of October 1999.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 99–28535 Filed 10–29–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care Treatment Furnished by The United States

Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by Section 2(a) of Pub. L. 87–693 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the three sets of rates outlined below are hereby established. These rates are for use in connection with the recovery, from tortiously liable third persons, of the cost of hospital and medical care and treatment furnished by the United States (Part 43, Chapter I, Title 28, Code of Federal Regulations) through three separate Federal agencies. The rates have been established in accordance with the requirements of OMB Circular A–25, requiring reimbursement of the full cost of all services provided. The rates are established as follows:

1. Department of Defense

The FY 2000 Department of Defense (DoD) reimbursement rates for inpatient, outpatient, and other services are provided in accordance with Section 1095 of title 10, United States Code. Due to size, the sections containing the Drug Reimbursement Rates (Section III.E) and the rates for Ancillary Services Requested by Outside Providers (Section III.F) are not included in this package. The Office of the Assistant Secretary of Defense (Health Affairs) will provide these rates upon request. The medical and dental service rates in this package (including the rates for ancillary services, prescription drugs or other procedures requested by outside providers) are effective October 1, 1999. Pharmacy rates are updated on an as-needed basis.

2. Health and Human Services

The development of FY 2000 tortiously liable rates for Indian Health Service health facilities incorporate a refinement in the method used in the development of the FY 1999 rates. This year the Department has elected to use Medicare cost reports to develop the FY 2000 tortiously liable rates.

The obligations for the Indian Health Service hospitals participating in the cost report project were identified and combined with applicable obligations for area offices costs and headquarters costs. The hospital obligations were summarized for each major cost center providing medical services and distributed between inpatient and outpatient. Total inpatient costs and outpatient costs were then divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. In calculation of the rates, the Department's unfunded retirement liability cost and capital and equipment depreciation costs were incorporated to conform to requirements set forth in OMB Circular A–25.

In addition, the obligations for each cost center include obligations from certain other accounts, such as Medicare and Medicaid collections and Contract Health fund, that were used to support direct program operations. Obligations were excluded for certain cost centers that primarily support workloads outside of the directly operated hospitals or clinics (public health nursing, public health nutrition, health education).

These obligations are not a part of the traditional cost of hospital operations and do not contribute directly to the inpatient and outpatient visit workload. Overall, these rates reflect a more accurate indication of the cost of care in the Department's hospital facilities.

Separate rates per inpatient day and outpatient visit were computed for

Alaska and the rest of the United States. This gives proper weight to the higher cost of operating medical facilities in Alaska.

3. Department of Veterans Affairs

Actual direct and indirect costs are compiled by type of care for the previous year, and facility overhead costs are added. Adjustments are made using the budgeted percentage changes for the current year and the budget year to compute the base rate for the budget year. The budget year base rate is then adjusted by estimated costs for depreciation of buildings and equipment, central office overhead, Government employee retirement benefits, and return on fixed assets (interest on capital for land, buildings, and equipment (net book value)), to compute the budget year tortiously liable reimbursement rates. Also shown for the tortiously liable inpatient per diem rates are breakdowns into three cost components: Physician; Ancillary; and Nursing, Room and Board. As with the total per diem rates, these breakdowns are calculated from actual data by type of care.

The tortiously liable rates shown will be used to seek recovery for VA medical care or services provided or furnished to persons in the following situations: tort feasor, humanitarian emergency, VA employee, family member, ineligible person, and allied beneficiary.

The interagency rates shown will be used when VA medical care or service is furnished to a beneficiary of another Federal agency, and that care or service is not covered by an applicable local sharing agreement. Government employee retirement benefits and return on fixed assets are not included in the interagency rates, but in all other respects the interagency rates are the same as the tortiously liable rates. When the medical care or service is obtained at the expense of the Department of Veterans Affairs from a non-VA source, the charge for such care or service will be the actual amount paid by the VA for that care or service.

Inpatient charges will be at the per diem rates shown for the type of bed section or discrete treatment unit providing the care. Prescription Filled charge in lieu of the Outpatient Visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. This charge applies whether the patient receives the prescription in person or by mail.

1. Department of Defense

For the Department of Defense, effective October 1, 1999 and thereafter:

Medical and Dental Services

Fiscal Year 2000—Inpatient, Outpatient and Other Rates and Charges

I. Inpatient Rates [1] [2]

Per inpatient day	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
A. Burn Center	$3,080.00	$5,529.00	$5,840.00
B. Surgical Care Services (Cosmetic Surgery)	1,411.00	2,533.00	2,675.00
C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG) [3])			

1. FY 2000 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Interagency	Other (full/third party)
Large Urban	$2,921.00	$5,498.00	$5,775.00
Other Urban/Rural	3,236.00	6,532.00	6,883.00
Overseas	3,606.00	8,520.00	8,941.00

2. Overview

The FY 2000 inpatient rates are based on the cost per DRG, which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA) (see paragraph I.C.1. above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. The published ASAs will be adjusted for area wage differences and indirect medical education (IME) for the discharging hospital. An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a nonteaching hospital in a Large Urban Area.

a. The cost to be recovered is DoD's cost for medical services provided in the non-teaching hospital located in a large urban area. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.3446. (DRG statistics shown are from FY 1998).

c. The DoD adjusted standardized amount to be charged is $5,775 (i.e., the third party rate as shown in the table).

d. DoD cost to be recovered at a non-teaching hospital with area wage index of 1.0 is the RWP factor (2.3446) in 3.b., above, multiplied by the amount ($5,775) in 3.c., above.

e. Cost to be recovered is $13,540

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG No.	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
020 ...	Nervous System Infection Except Viral Meningitis	2.3446	8.1	5.7	1	29

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	Applied ASA
Non-teaching Hospital	Large Urban	1.0	1.0	$5,775	$5,775

Patient	Length of stay	Days above threshold	Relative weighted product			TPC
			Inlier*	Outlier**	Total	Amount***
#1	7 days	0	2.3446	000	2.3446	$13,540
#2	21 days	0	2.3446	000	2.3446	$13,540
#3	35 days	6	2.3446	0.8144	3.1590	$18,243

*DRG Weight
**Outlier calculation = 33 percent of per diem weight × number of outlier days = .33 (DRG Weight/Geometric Mean LOS) × (Patient LOS—Long Stay Threshold)
= .33 (2.3446/5.7) × (35 − 29)
= .33 (.41133) × 6 (take out to five decimal places)
= .13574 × 6 (take out to five decimal places)
= .8144 (take out to four decimal places)
*** Applied ASA × Total RWP

II. Outpatient Rates [1] [2] Per Visit

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
	A. Medical Care			
BAA	Internal Medicine	$104.00	$194.00	$204.00
BAB	Allergy	53.00	99.00	105.00
BAC	Cardiology	87.00	163.00	172.00
BAE	Diabetic	61.00	114.00	121.00
BAF	Endocrinology (Metabolism)	102.00	190.00	201.00
BAG	Gastroenterology	146.00	272.00	287.00
BAH	Hematology	179.00	334.00	352.00
BAI	Hypertension	106.00	198.00	208.00
BAJ	Nephrology	208.00	387.00	409.00
BAK	Neurology	121.00	225.00	238.00
BAL	Outpatient Nutrition	42.00	79.00	83.00
BAM	Oncology	134.00	250.00	264.00
BAN	Pulmonary Disease	153.00	285.00	301.00
BAO	Rheumatology	101.00	188.00	199.00
BAP	Dermatology	78.00	146.00	154.00
BAQ	Infectious Disease	178.00	332.00	350.00
BAR	Physical Medicine	83.00	155.00	163.00
BAS	Radiation Therapy	128.00	238.00	251.00
BAT	Bone Marrow Transplant	115.00	214.00	226.00
BAU	Genetic	367.00	683.00	721.00
	B. Surgical Care			
BBA	General Surgery	148.00	276.00	291.00
BBB	Cardiovascular and Thoracic Surgery	320.00	595.00	628.00
BBC	Neurosurgery	173.00	323.00	341.00
BBD	Ophthalmology	90.00	168.00	177.00
BBE	Organ Transplant	399.00	742.00	783.00
BBF	Otolaryngology	106.00	197.00	207.00
BBG	Plastic Surgery	131.00	244.00	258.00
BBH	Proctology	84.00	157.00	165.00

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BBI	Urology	112.00	209.00	221.00
BBJ	Pediatric Surgery	167.00	311.00	328.00
BBK	Peripheral Vascular Surgery	78.00	146.00	154.00
BBL	Pain Management	97.00	180.00	190.00
	C. Obstetrical and Gynecological (OB–GYN) Care			
BCA	Family Planning	57.00	106.00	112.00
BCB	Gynecology	89.00	165.00	175.00
BCC	Obstetrics	74.00	138.00	146.00
BCD	Breast Cancer Clinic	184.00	342.00	361.00
	D. Pediatric Care			
BDA	Pediatric	62.00	115.00	121.00
BDB	Adolescent	65.00	122.00	129.00
BDC	Well Baby	42.00	79.00	83.00
	E. Orthopaedic Care			
BEA	Orthopaedic	93.00	174.00	183.00
BEB	Cast	59.00	110.00	117.00
BEC	Hand Surgery	69.00	129.00	136.00
BEE	Orthotic Laboratory	67.00	125.00	132.00
BEF	Podiatry	56.00	105.00	111.00
BEZ	Chiropractic	25.00	47.00	50.00
	F. Psychiatric and/or Mental Health Care			
BFA	Psychiatry	124.00	230.00	243.00
BFB	Psychology	93.00	174.00	184.00
BFC	Child Guidance	57.00	105.00	111.00
BFD	Mental Health	104.00	194.00	204.00
BFE	Social Work	102.00	190.00	200.00
BFF	Substance Abuse	99.00	184.00	195.00
	G. Family Practice/Primary Medical Care			
BGA	Family Practice	74.00	138.00	146.00
BHA	Primary Care	77.00	143.00	151.00
BHB	Medical Examination	80.00	148.00	156.00
BHC	Optometry	50.00	93.00	98.00
BHD	Audiology	35.00	65.00	69.00
BHE	Speech Pathology	101.00	188.00	199.00
BHF	Community Health	66.00	123.00	130.00
BHG	Occupational Health	73.00	136.00	143.00
BHH	TRICARE Outpatient	56.00	104.00	109.00
BHI	Immediate Care	107.00	200.00	211.00
	H. Emergency Medical Care			
BIA	Emergency Medical	126.00	234.00	247.00
	I. Flight Medical Care			
BJA	Flight Medicine	88.00	164.00	173.00
	J. Underseas Medical Care			
BKA	Underseas Medicine	43.00	79.00	84.00
	K. Rehabilitative Services			
BLA	Physical Therapy	41.00	77.00	81.00
BLB	Occupational Therapy	61.00	114.00	120.00

III. Ambulatory Procedure Visit (APV)[6] Per Visit

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
	Medical Care			
BB	Surgical Care	937.00	1,740.00	1,836.00
BD	Pediatric Care	233.00	430.00	454.00
BE	Orthopaedic Care	1,179.00	2,192.00	2,313.00
	All other B clinics not included above (BA, BC, BF, BG, BH, BI, BJ, BK and BL).	430.00	797.00	841.00

IV. Other Rates and Charges[1 2] Per Visit

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
FBI	A. Immunization	$16.00	$30.00	$32.00
DGC	B. Hyperbaric Chamber[5]	153.00	285.00	301.00
	C. Family Member Rate (formerly Military Dependents Rate)	10.85		
	D. Reimbursement Rates For Drugs Requested By Outside Providers[7]			

The FY 2000 drug reimbursement rates for drugs are for prescriptions requested by outside providers and obtained at a Military Treatment Facility. The rates are established based on the cost of the particular drugs provided based on the DoD-wide average per National Drug Code (NDC) number. Final rule 32 CFR Part 220, which has still not been published when this package was prepared, eliminates the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." The phrase "high cost ancillary service" will be replaced with the phrase "ancillary services requested by an outside provider" on publication of final rule 32 CFR Part 220. The list of drug reimbursement rates is too large to include here. These rates are available on request from OASD (Health Affairs)—see Tab O for the point of contact.

E. Reimbursement Rates for Ancillary Services Requested By Outside Providers[8]

Final rule 32 CFR Part 220, which has still not been published when this package was prepared, eliminates the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." The phrase "high cost ancillary service" will be replaced with the phrase "ancillary services requested by an outside provider" on publication of final rule 32 CFR Part 220. The list of FY 2000 rates for ancillary services requested by outside providers and obtained at a Military Treatment Facility is too large to include here. These rates are available on request from OASD (Health Affairs)—see Tab O for the point of contact.

F. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International Classification Diseases (ICD–9)	Current Procedural Terminology (CPT)[9]	FY 2000 charge[10]	Amount of charge
Mammaplasty—augmentation.	85.50, 85.32, 85.31	19325, 19324, 19318	Inpatient Surgical Care Per Diem Or APV	(a) (b)
Mastopexy	85.60	19316	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(a b c)
Facial	86.82	15824	Inpatient Surgical Care Per Diem Or APV	(a b)
Rhytidectomy	86.22			
Blepharoplasty	08.70, 08.44	15820, 15821, 15822, 15823.	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(a b c)
Mentoplasty	76.68	21208	Inpatient	(a)
(Augmentation/Reduction).	76.67	21209	Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(b c)
Abdominoplasty	86.83		Inpatient Surgical Care Per Diem	(a)
Lipectomy Suction per region[11].	86.83	15876, 15877, 15878, 15879.	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(a b c)
Rhinoplasty	21.87, 21.86	30400, 30410	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(a b c)
Scar Revisions beyond CHAMPUS.	86.84	1578__	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate.	(a b c)
Mandibular or Maxillary Repositioning.	76.41		Inpatient Surgical Care Per Diem	(a)
Dermabrasion		15780	APV or applicable Outpatient Clinic Rate	(b c)
Hair Restoration		15775	APV or applicable Outpatient Clinic Rate	(b c)
Removing Tattoos		15780	APV or applicable Outpatient Clinic Rate	(b c)
Chemical Peel		15790	APV or applicable Outpatient Clinic Rate	(b c)
Arm/Thigh Dermolipectomy.	86.83	15836/15832	Inpatient Surgical Care Per Diem Or APV	(a b)

Cosmetic surgery procedure	International Classification Diseases (ICD–9)	Current Procedural Terminology (CPT)[9]	FY 2000 charge[10]	Amount of charge
Refractive surgery			APV or applicable Outpatient Clinic Rate	(b c)
Radial Keratotomy		65771		
Other Procedure (if applies to laser or other refractive surgery).		66999		
Otoplasty		69300	APV or applicable Outpatient Clinic Rate	(a b c)
Brow Lift	86.3	15839	Inpatient Surgical Care Per Diem Or APV	(a b)

G. Dental Rate[12] Per Procedure

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
Dental Services	ADA code and DoD established weight..	$45.00	$109.00	$115.00

H. Ambulance Rate[13] Per Visit

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
FEA	Ambulance	$62.00	$116.00	$122.00

I. Ancillary Services Requested by an Outside Provider[8] Per Procedure

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	Laboratory procedures requested by an outside provider CPT '99 Weight Multiplier.	$13.00	$20.00	$21.00
	Radiology procedures requested by an outside provider CPT '99 Weight Multiplier.	$57.00	$86.00	$90.00

J. AirEvac Rate[14] Per Visit

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	AirEvac Services—Ambulatory	$195.00	$364.00	$384.00
	AirEvac Services—Litter	$567.00	$1,056.00	$1,114.00

K. Observation Rate[15] Per hour

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	Observation Services—Hour	$17.00	$31.00	$32.00

Notes on Cosmetic Surgery Charges

[a] Per diem charges for inpatient surgical care services are listed in Section I.B. (See notes 9 through 11, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in Section III.C. (See notes 9 through 11, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure unit (APU).

[c] Charges for outpatient clinic visits are listed in Sections II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

Notes on Reimbursable Rates

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 98 percent hospital and 2 percent professional charges. The outpatient per visit percentages are 89 percent outpatient services and 11 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the Health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the sub account within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

MEPRS CODE
Outpatient Care (Functional Category)—B
Medical Care (Summary Account)—BA
Internal Medicine (Subaccount)—BAA

[5] Hyperbaric service charges shall be based on hours of service in 15-minute increments. The rates listed in Section III.B. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) of service. Fractions of an hour shall be rounded to the next 15-minute increment (*e.g.*, 31 minutes shall be charged as 45 minutes).

[6] Ambulatory procedure visit is defined in DOD Instruction 6025.8, "Ambulatory Procedure Visit (APV)," dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). An APU is a location or organization within an MTF (or freestanding outpatient clinic) that is specially equipped, staffed and designated for the purpose of providing the intensive level of care associated with APVs. Care is required in the facility for less than 24 hours. All expenses and workload are assigned to the MTF-established APU associated with the referring clinic. The BB, BD and BE APV rates are only to be used by clinics that are subaccounts under these summary accounts (see [4]) for an explanation of MEPRS hierarchical arrangement). The All Other APV rate is to be used only by those clinics that are not a subaccount under BB, BD or BE.

[7] Prescription services requested by outside providers (*e.g.*, physicians or dentists) that are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from a Military Treatment Facility (MTF) that are prescribed by providers external to the MTF. Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard cost of medications ordered by an outside provider that includes the cost of the drugs plus a dispensing fee per prescription. The prescription cost is calculated by multiplying the number of units (*e.g.*, tablets or capsules) by the unit cost and adding a $6.00 dispensing fee per prescription. Final rule 32 CFR Part 220, which has still not been published when this package was prepared, eliminates the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." The phrase "high cost ancillary service" will be replaced with the phrase "ancillary services requested by an outside provider" on publication of final rule 32 CFR Part 220. The elimination of the threshold also eliminates the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeded $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR Part 220.

[8] Charges for ancillary services requested by an outside provider (physicians, dentists, etc.) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who have medical insurance obtain services from the MTF which are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated by multiplying the DoD established weight for the Physicians' Current Procedural Terminology (CPT '99) code by either the laboratory or radiology multiplier (Section III.J). Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for ancillary services.

Final rule 32 CFR Part 220, which has still not been published when this package was prepared, eliminates the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." The phrase "high cost ancillary service" will be replaced with the phrase "ancillary services requested by an outside provider" on publication of final rule 32 CFR Part 220. The elimination of the threshold also eliminates the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeded $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR Part 220.

[9] The attending physician is to complete the CPT '99 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[10] Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedure information is contained in Section III.G. The patient shall be charged the rate as specified in the FY 2000 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the "Other" rate) for inpatient per diem surgical care services in Section I.B., ambulatory procedure visits as contained in Section III.C, or the appropriate outpatient clinic rate in Sections II.A-K. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. (Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[11] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[12] Dental service rates are based on a dental rate multiplier times the American Dental Association (ADA) code and the DoD established weight for that code.

[13] Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in Section III.I are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (*e.g.*, 31 minutes shall be charged as 45 minutes).

[14] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient. The appropriate charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC). These charges are only for the cost of providing medical care. Flight charges are billed by GPMRC separately using the commercial rate effective the date of travel plus $1.

[15] Observation Services are billed at the hourly charge. Begin counting when the patient is placed in the observation bed and round up to the nearest hour. If a patient status changes to inpatient, the charges for observation services are added to the DRG assigned to the case and not billed separately. If a patient is released from Observation status and is sent to an APV, the charges for Observation services are not billed separately but are added to the APV rate to recover all expenses.

2. Department of Health and Human Services

For the Department of Health and Human Services, Indian Health Service, effective October 1, 1999 and thereafter:

	Hospital Care Inpatient Day	
General Medical Care	Alaska	$1,925
	Rest of the United States	1,313
	Outpatient Medical Treatment	
Outpatient Visit	Alaska	308
	Rest of the United States	211

3. Department of Veterans Affairs

Effective October 1, 1999, and thereafter:

	Tortiously liable rates	Interagency rates
Hospital Care, Rates Per Inpatient Day		
General Medicine:		
Total	$1610	$1476
Physician	193	
Ancillary	420	
Nursing, Room, and Board	997	
Neurology:		
Total	1927	1757
Physician	282	
Ancillary	509	
Nursing, Room, and Board	1136	
Rehabilitation Medicine:		
Total	1065	974
Physician	121	
Ancillary	325	
Nursing, Room, and Board	619	
Blind Rehabilitation:		
Total	1009	928
Physician	81	
Ancillary	501	
Nursing, Room, and Board	427	
Spinal Cord Injury:		
Total	970	885
Physician	120	
Ancillary	244	
Nursing, Room, and Board	606	
Surgery:		
Total	3023	2788
Physician	333	
Ancillary	917	
Nursing, Room, and Board	1773	
General Psychiatry:		
Total	640	577
Physician	60	
Ancillary	101	
Nursing, Room, and Board	479	
Substance Abuse (Alcohol and Drug Treatment):		
Total	339	308
Physician	32	
Ancillary	78	
Nursing, Room, and Board	229	
Intermediate Medicine:		
Total	491	446
Physician	24	
Ancillary	72	
Nursing, Room, and Board	395	
Nursing Home Care, Rates Per Day		
Nursing Home Care:		
Total	339	307
Physician	11	
Ancillary	46	
Nursing, Room, and Board	282	

	Tortiously liable rates	Interagency rates
Outpatient Medical and Dental Treatment		
Outpatient Visit (other than Emergency Dental)	254	236
Emergency Dental Outpatient Visit	157	140
Prescription Filled	36	35

For the period beginning October 1, 1999, the rates prescribed herein superseded those established by the Director of the Office of Management and Budget October 16, 1998 (61 FR 56360).

Jacob J. Lew,

Director, Office of Management and Budget.

[FR Doc. 99–28115 Filed 10–29–99; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 1, 1999.

A closed meeting will be held on Wednesday, November 3, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 3, 1999, will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

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: October 27, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–28607 Filed 10–28–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42056; File No. SR–CHX–99–22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1, 2 and 3 by the Chicago Stock Exchange, Inc., Relating to Listing Standards for Trust Issued Receipts

October 22, 1999.

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 October 7, 1999, the Chicago Stock Exchange, Inc., ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment Nos. 1, 2, and 3 were filed on October 13, 15, and 20, 1999, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1, 2, and 3 from interested persons and to grant accelerated approval to the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 added new text regarding the arbitrage process and the trust issued receipt's trading price. Amendment No. 2 added additional minimum listing requirements for securities to qualify for inclusion in a trust issued receipt. Amendment No. 3 changed the figure for initial distribution of Internet HOLDRs from 150,000 to approximately 3.7 million. *See* Letters from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, to Heather Traeger, Attorney, Division of Market Regulation, SEC, dated October 13, 1999, October 15, 1999 and October 20, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a new Rule 27 to Article XXVIII of the Exchange's rules to adopt listing standards for trust receipts. Once these listing standards have been approved, the Exchange intends to trade Internet Holding Company Depository Receipts ("Internet HOLDRs"), a trust issued receipt. The Exchange also proposes to trade Internet HOLDRs pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available at the Office of the Secretary, CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing listing criteria to allow the Exchange to list trust issued receipts, and to trade Internet HOLDRs, a type of trust issued receipt, pursuant to UTP. The Exchange represents that trust issued receipts provide investors with a flexible, cost-effective way to purchase, hold and transfer the securities of one or more specified companies.

a. *Trust Issued Receipts Generally.—Description.* Trust issued receipts are negotiable receipts which are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust

issued receipts. Trust issued receipts allow investors to hold securities investments from a variety of companies throughout a particular industry in a single, exchange-listed and traded instrument that represents their beneficial ownership of each of the deposited securities. Holders of trust issued receipts maintain beneficial ownership of each of the deposited securities evidenced by trust issued receipts. Holders may cancel their trust issued receipts at any time to receive the deposited securities.

Beneficial owners of the receipts have the same rights, privileges and obligations as they would have if they benefically owned the deposited securities outside of the trust issued receipt program. For example, holders of the receipts have the right to instruct the trustee to vote the deposited securities evidenced by the receipts; will receive reports, proxies and other information distributed by the issuers of the deposited securities to their security holders; and will receive dividends and other distributions if any are declared and paid by the issuers of the deposited securities to the trustee.

Creation of a trust. Trust issued receipts will be issued by a trust created pursuant to a depository trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in trust issued receipts will be permitted to withdraw his or her deposited securities upon delivery to the trustee of one or more round-lots of 100 trust issued receipts and to deposit such securities to receive trust issued receipts.

b. *Criteria for Initial and Continued Listing.* The Exchange believes that the listing criteria proposed in its new rule are generally consistent with the "Other Securities" criteria currently found in Article XXVIII, Rule 13 of the CHX Rules as well as the trust issued receipt listing criteria currently used by the American Stock Exchange.[4]

Initial Listing. Under the proposed rule, if trust issued receipts are to be listed on the Exchange, the Exchange will establish a minimum number of trust issued receipts required to be outstanding at the time trading commences on the Exchange and will include that number in any required submission to the Commission.

Continued Listing. The Exchange will consider the suspension of trading in, or removal from listing of, a trust upon which a series of trust issued receipts is based when any of the following circumstances arise: (1) If the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the trust issued receipts for 30 or more consecutive trading days; (2) if the trust has fewer than 50,000 receipts issued and outstanding; (3) if the market value of all receipts issued and outstanding is less than $1,000,000; or (4) if any other event occurs, or any other condition exists, which, in the opinion of the Exchange, makes further trading on the Exchange inadvisable. These flexible criteria allow the Exchange to avoid delisting trust issued receipts (leading to a possible termination of the trust) because of relatively brief fluctuations in market conditions that may cause the number of holders to vary.

The Exchange will not, however, be required to suspend or delist from trading, based on the above factors, any trust issued receipts for a period of one year after the initial listing of such trust issued receipts for trading on the Exchange. Notwithstanding, in the first year and thereafter, if the number of companies represented by the deposited securities drops to less than nine, and each time thereafter the number of companies is reduced, the Exchange will consult with the Commission to confirm the appropriateness of continued listing of the trust issued receipts.

c. *Exchange Rules Applicable to the Trading of Trust Issued Receipts.* Trust issued receipts are considered "securities" under the Rules of the Exchange and are subject to all applicable trading rules, including the provisions of Article XX, Rule 40, ITS Trade-Throughs and Locked Markets, which prohibit CHX members from initiating trade-throughs for ITS securities, as well as rules governing priority, parity and precedence of orders, market volatility-related trading halt provisions and responsibilities of the assigned specialist firm.[5] Exchange equity margin rules will apply.

Trust issued receipts will trade in the minimum fractional increments described in CHX Article XX, Rule 22. If the trust issued receipts are also traded on the American Stock Exchange, those receipts will trade at a minimum variation of 1/16th of $1.00 for trust issued receipts selling at or above $.25 and 1/32nd of $1.00 for those selling below $.25. If the trust issued receipts are traded on any other exchange or are exclusively listed on the CHX, different minimum fractional increments may apply.

The Exchange's surveillance procedures for trust issued receipts will be similar to the procedures used for portfolio depositary receipts and will incorporate and rely upon existing CHX surveillance systems.

Prior to the commencement of trading of each new trust issued receipt, the Exchange will distribute a circular to its members and member organizations alerting them to the unique characteristics of trust issued receipts, including the fact that trust issued receipts are not individually redeemable. The circular will also confirm that trust issued receipts are subject to the Exchange's rule relating to trading halts due to extraordinary market volatility (Article IX, Rule 10A) and that the underlying securities included in the trust are subject to the Exchange's rule which allows Exchange officials to halt trading in specific securities, under certain circumstances (Article IX, Rule 10(b)). The circular will advise members that, in exercising the discretion described in Article IX, Rule 10(b), appropriate Exchange officials may consider a variety of factors, including the event to which trading is not occurring in an underlying security and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

d. *Disclosure to Customers.* The Exchange will require its members to provide all purchasers of newly issued trust issues receipts with a prospectus for that series of trust issued receipts.

e. *Trading of Internet HOLDRs.* As noted above, upon approval of the CHX's listing standards for trust issued receipts, the Exchange intends to begin trading a particular series of trust issued receipts, Internet HOLDRs pursuant to UTP privileges. The following section of this submission contains information about Internet HOLDRs. This information is based upon descriptions included in the Internet HOLDRs prospectus, the Internet HOLDRs depositary trust agreement, the Amex submissions relating to its trust issued receipt listing proposal and the

[4] The American Stock Exchange's ("Amex") listing criteria were approved by the Commission on September 21, 1999. *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

[5] There are two possible exceptions to this general rule. First, if trust issued receipts are traded only in round lots (or round-lot multiples), the Exchange's rules relating to odd-lot executions will not apply. Additionally, the Exchange understands that application for exemption from the short sale rule, Rule 10a–1 under the Act, 17 CFR 240.10a–1, has been made with respect to Internet HOLDRs and is currently pending with the Commission. If that request is granted and if it applies to trust issued receipts traded on the Exchange, the Exchange will issue a notice to its members detailing the terms of the exemption and confirming that applicable CHX rules relating to short sales do not apply.

Commission's order approving the Amex proposal.[6]

Creation of Internet HOLDRs. Internet HOLDRs will be issued by the Internet HOLDRs Trust, which was created pursuant to a depositary trust agreement dated September 2, 1999, among The Bank of New York, as trustee, Merrill Lynch Pierce Fenner & Smith Incorporated, other depositors and the owners of the Internet HOLDRs. The Exchange understands that approximately 3.7 million trust issued receipts were issued in connection with the initial distribution of Internet HOLDRs.

The deposited securities underlying Internet HOLDRs are: America Online (AOL), Yahoo Inc. (YHOO), Amazon.com Inc. (AMZN), eBay Inc. (EBY), At Home Corp. (ATHM), PricelineCom Inc. (PCLIN), CMGI Inc. (CMGI), Inktomi Corporation (INKT), RealNetworks, Inc. (RNWK), Exodus Communications, Inc. (EXDS), E*TRADE Group Inc. (EGRP), DoubleClick Inc. (DCLK), Ameritrade Holding Corp. (AMTD), Lycos, Inc. (LCOS), CNET, Inc. (CNET), PSINet Inc. (PSIX), Network Associates, Inc. (NETA), Earthlink Network, Inc. (ELNK), Mindspring Enterprises, Inc. (MSPG), and Go2NET, Inc. (GNET).

The twenty companies represented by the securities in the portfolio underlying the Internet HOLDRs trust were required to meet the following minimum criteria when they were selected on August 31, 1999: (1) each company's common stock must be registered under Section 12 of the Exchange Act; (2) the minimum public float of each company included in the portfolio must be at least $150 million; (3) each security must be either listed on a national securities exchange or traded through the facilities of Nasdaq and reported national market system securities; (4) the average daily trading volume must be at least 100,000 shares during the preceding sixty-day period; and (5) the average daily dollar value of the shares traded during the preceding sixty-day period must be at least $1 million. the initial weighting of each security in the portfolio was based on its market capitalization as of August 31, 1999; however, any security that represented more than 20% of the overall value of the receipt on the date the weighting was determined, was reduced to no more than 20% of the receipt value.

In addition, each of the companies whose common stock is included in the Internet HOLDRs also met the following criteria: (1) the market capitalization for each company was equal to or greater than $1 billion; (2) the average daily trading volume for each security was at least 1.2 million shares over the 60 trading days prior to August 31, 1999; (3) the average daily dollar volume of the shares traded for each company during the sixty-day trading period prior to August 31, 1999 was at least $60 million; and (4) each company was traded on a national securities exchange or Nasdaq/NM for at least ninety days prior to August 31, 1999.

Trading Issues. A round lot of 100 Internet HOLDRs represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. Because Internet HOLDRs may be acquired held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts, orders for less than a round lot will be rejected, while orders for greater than a round lot (but not a round-lot multiple) will be filled to the extent of the largest round lot multiple, rejecting the remaining odd lot.[7]

The Exchange believes that trust issued receipts will not trade at a material discount or premium to the assets held by the issuing trust. The Exchange represents that the arbitrage process—which provides the opportunity to profit from differences in prices of the same or similar securities (*e.g.*, the trust issued receipts and the portfolio of deposited securities), increases the efficiency of the markets and serves to prevent potentially manipulative efforts—should promote correlative pricing between the trust issued receipts and the deposited securities. If the price of the trust issued receipt deviates enough from the portfolio of deposited securities to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the trust issued receipt at a discount, immediately cancel them in exchange for the deposited securities and sell the shares in the cash market at a profit, or sell the trust issued receipts short at a premium and buy the securities represented by the receipts to deposit in exchange for the trust issued receipts to deliver against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

Maintenance of the Internet HOLDRs Portfolio. Except when a reconstitution event occurs, as described below, the securities represented by a trust issued receipt will not change.[8] According to the Internet HOLDRs prospectus, under no circumstances will a new company be added to the group of issuers of the underlying securities and weightings of component securities will not be adjusted after they are initially set.

Reconstitution Events. As described in the Internet HOLDRs prospectus, the securities underlying the trust issued receipts will be automatically distributed to the beneficial owners of the receipts in four circumstances:

(1) If the issuer of the underlying securities no longer has a class of common stock registered under Section 12 of the Act, then its securities will no longer be an underlying security and the trustee will distribute the shares of that company to the owners of the trust issued receipts;

(2) If the Commission finds that an issuer of underlying securities should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the shares of that company to the owners of the trust issued receipts;

(3) If the underlying securities of an issuer cease to be outstanding as a result of a merger, consolidation or other corporate combination, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of the trust issued receipts, unless the acquiring company's securities are already included in the trust issued receipts as deposited securities and the consideration paid is additional underlying securities, in which case the additional securities will be deposited into the trust; and

(4) If an issuer's underlying securities are delisted from trading on a national securities exchange or Nasdaq and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the securities are delisted.

As described in the prospectus, if a reconstitution event occurs, the trustee will deliver the underlying security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

Issuance and Cancellation of Internet HOLDRs. The trust will issue and cancel, and an investor may obtain, hold, trade and surrender, Internet

[6] *See supra*, note 4.

[7] For example, an order for 50 trust issued receipts will be rejected and an order for 1050 trust issued receipts will be executed in part (1,000) and rejected in part (50).

[8] Even if a reconstitution event does not occur, the number of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on the deposited securities and the relative weightings among the deposited securities may change based on the current market price of the deposited securities.

HOLDRs only in a round lot of 100 trust issued receipts and round-lot multiples. Nevertheless, the bid and asked prices will be quoted on a per receipt basis. The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

An investor may obtain trust issued receipts by either purchasing them on an exchange or by delivering to the trustee the underlying securities evidencing a round lot of trust issued receipts. The trustee will charge investors an issuance fee of up to $10 for each round lot of 100 trust issued receipts. An investor may cancel trust issued receipts and withdraw the deposited securities by delivering a round lot or round-lot multiple of the trust issued receipts to the trustee, during normal business hours. The trustee will charge investors a cancellation fee of up to $10 for each round lot of 100 trust issued receipts. Lower charges may be assigned based on the volume, frequency and size of issuances and cancellations. According to the prospectus, the trustee expects that, in most cases, it will deliver the deposited securities within one business day of the withdrawal request.

Termination of the Trust. As described in the Internet HOLDRs prospectus, the trust will terminate on the earliest of the following occurrences: (1) If the trustee resigns and no successor trustee is appointed by the initial depositor within 60 days from the date the trustee provides notice to the initial depositor of its intent to resign; (2) If the trust issued receipts are delisted from the Amex and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the receipts are delisted; (3) If 75% of the beneficial owners of outstanding trust issued receipts (other than Merrill Lynch, Pierce, Fenner & Smith Incorporated) vote to dissolve and liquidate the trust; or (4) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to beneficial owners as promptly as practicable after the termination event.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5)[9] of the Act is that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of 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 Exchange does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–22 and should be submitted by November 22, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

A. Generally

The Commission finds that the proposed rule change,as amended, is consistent with the requirements of Section 6(b)(5) of a the Act[10] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds, as it did in the Amex order approving the listing and trading of trust issued receipts and Internet HOLDRs,[11] that the proposal establishing listing standards for trust issued receipts and to trade Internet HOLDRs will provide investors with a convenient and less expensive way of participating in the securities markets. The proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[12]

As noted in the Amex approval order, the Commission believes that trust issued receipts will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade trust issued receipts representing a portfolio of securities continuously throughout the business day in secondary market transactions negotiated prices. Trust issue receipts will allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investors owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the trust issued receipts.

Although trust issued receipts are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.[13] Nevertheless, the

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra*, note 4.

[12] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] The Commission has concerns about continued trading of the trust receipts whether listed or pursuant to UTP, if the number of component securities falls to a level below nine securities, because the receipts may not longer adequately reflect a cross section of the selected industry. Accordingly, the CHX has agreed to consult the Commission concerning continued trading, once

Continued

Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading, and other issues.

B. Trading of Trust Issued Receipts—Listing and UTP

The Commission finds that the CHX's proposal contains adequate rules and procedures to govern the trading of trust issued receipts whether by listing or pursuant to UTP. Trust issued receipts are equity securities that will be subject to the full panoply of CHX rules governing the trading of equity securities on the CHX, including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.[14]

In addition, the CHX has developed specific listing and delisting criteria for trust issued receipts that will help to ensure that a minimum level of liquidity will exist for trust issued receipts to allow for the maintenance of fair and orderly markets. The delisting criteria also allows the CHX to consider the suspension of trading and the delisting of a trust issued receipt if an event occurred that made further dealings in such securities inadvisable. This will give the CHX flexibility to delist trust issued receipts if circumstances warrant such action. CHX's proposal also provides procedures to halt trading in trust issued receipts in certain enumerated circumstances.

Moreover, in approving this proposal, the Commission notes the Exchange's belief that trust issued receipts will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The Exchange represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the overall value of the deposited securities.

Furthermore, the Commission believes that the Exchange's proposal to trade trust issued receipts in minimum fractional increments of 1/16th of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in trust issued receipts.

Finally, the CHX will apply surveillance procedures for trust issued receipts that will be similar to the procedures used for portfolio depositary receipts and will incorporate and rely upon existing CHX surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading trust issued receipts, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of trust issued receipts provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

C. Disclosure and Dissemination of Information

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risk of trading trust issued receipts. The prospectus will address the special characteristics of a particular trust issued receipt basket, including a statement regarding its redeemability and method of creation. The Commission notes that all investors in trust issued receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a trust issued receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all CHX member firms who purchase trust issued receipts from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any trust issued receipts, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note the Exchange members' prospectus delivery requirements, and highlight the characteristics of purchases in trust issued receipts. The circular also will inform members of Exchange policies regarding trading halts in trust issued receipts.

CHX has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register.** The Commission believes that the Exchange's proposal to trade trust issued receipts, and specifically Internet HOLDRs pursuant to UTP privileges, will provide investors with a convenient and less expensive way of participating in the securities markets. The Commission believes that the proposed rule change could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that by increasing the availability of trust issued receipts, and in particular Internet HOLDRs, as an investment tool, the CHX's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. The Commission notes, however, that notwithstanding approval of the listing standards for trust issued receipts, other similarly structured products, including trust issued receipts based on other industries, will require review by the Commission prior to being traded on the Exchange. Additional series cannot be listed by the Exchange prior to contacting Division staff. In addition, the CHX may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

As noted above, the Commission has approved the listing and trading of trust issued receipts, including Internet HOLDs, at the Amex, under rules that are substantially similar to CHX Article XXVII, rule 27. The trading requirements of trust issued receipts at the CHX will be substantially similar to the trading requirements of trust issued receipts at the Amex. The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.[15] The Commission does not believe that trading of this product raises novel regulatory issues that were not addressed in the previous filing. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register.**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CHX–99–22),

the trust has fewer than nine component securities, and for each subsequent loss of a security thereafter.

[14] Trading rules pertaining to the availability of odd-lot trading do not apply because trust issued receipts only can be traded in round-lots.

[15] *See* Securities Exchange Act Release No. 48192 (September 21, 1999), 64 FR 52559 (September 29, 1999).

[16] 15 U.S.C. 78s(b)(2).

as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28457 Filed 10–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42057; File No. SR–NASD–99–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., to Delay Implementation of 90–Second Trade Reporting as Part of a Pilot Program Extending the Availability of Certain Nasdaq Services and Facilities Until 6:30 P.M. Eastern Time

October 22, 1999.

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 October 22, 1999, the National Association of Securities Dealers, Inc., ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc., ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Also on October 22, 1999, the NASD filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to defer, until November 15, 1999, the imposition of 90-second trade reporting rules between the hours of 5:15 p.m. and 6:30 p.m. Eastern Time that are part of a pilot program extending the availability of several Nasdaq services and facilities until 6:30 p.m. Eastern Time. This pilot was approved by the Commission[6] and is set to commence on October 25, 1999. The text of the proposal is available upon request from the Office of the Secretary, the NASD, or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments is received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 13, 1999, the Commission approved a pilot program expanding the operating hours of certain Nasdaq services and facilities until 6:30 p.m. Eastern Time.[7] The pilot is set to commence on October 25, 1999, and will expand until 6:30 p.m. Eastern Time the operation times of the following services: (1) SelectNet Service ("SelectNet"); (2) Automated Confirmation Transaction Service ("ACT"); (3) Nasdaq Quotation Dissemination Service ("NQDS"); and (4) Nasdaq Trade Dissemination Service ("NTDS"). Subsequent to the Commission's approval of the pilot, Nasdaq and the Commission received numerous expressions of concern from NASD members regarding their ability to convert their internal automated systems in time to comply with the October 25, 1999 start of the pilot, and in particular with the imposition of new 90-second trade reporting obligations between the hours of 5:15 p.m. and 6:30 p.m. Eastern Time.

Upon review of these concerns, the determination was made to defer imposition of 90-second trade reporting until November 15, 1999 between the hours of 5:15 p.m. and 6:30 p.m. Eastern Time. All member firms are expected, however, to report trades as soon as possible after execution, and to the extent they are able to do so before November 15, 1999, within 90 seconds. In addition, Nasdaq has requested that the Commission staff expand its previous grant of no-action relief concerning SEC Rules 11Ac1–1(c)(5),[8] 11Ac1–4[9] and 301(b)(3)[10] to December 6, 1999, the date on which Nasdaq expects to be able to provide an inside quote. Pursuant to this relief, the NASD will likewise defer enforcement of NASD IM 2110–2 (Trading Ahead of Customer Limit Order) until December 6, 1999.

Finally, Nasdaq will soon amend SR–NASD–99–62, currently pending with the Commission, which seeks to mandate 90-second trade reporting is listed securities from 5:15 p.m. to 6:30 p.m., to seek a delay in imposing that obligation on NASD member firms until November 15, 1999, to allow firms additional time to modify their internal systems and make uniform the start date for 90-second trade reporting.

These modifications will allow the expanded availability of Nasdaq's SelectNet/ACT/NQDS/NTDS systems and services to 6:30 p.m. Eastern Time to commence on October 25, 1999, as scheduled, while at the same time giving NASD member firms sufficient time to make internal systems changes.

Nasdaq believes that the proposal will provide firms with a reasonable opportunity to enhance their internal systems prior to the November 15, 1999 start date of expanded 90-second trade reporting. Nasdaq believes this approach strikes a prudent balance between investors' need for enhanced quote and trade collection and dissemination after the regular close of the Nasdaq market and constraints faced by the industry with the implementation of system solutions to what would otherwise will be the manual processing of trades and trade reports.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[11] in that it is designed to prevent fraudulent and manipulative acts and

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* October 22, 1999 letter from Thomas P. Moran, Assistant General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, Nasdaq requested that the proposed rule change be filed under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6). Nasdaq also requested that the Commission waive the 5-day notice of its intent to file the proposal and the 30-day period before the proposal becomes operative pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 42003 (October 13, 1999)(SR–NASD–99–57).

[7] *Id.*

[8] 17 CFR 240.11Ac1–1(c)(5).

[9] 17 CFR 240.11Ac1–4.

[10] 17 CFR 242.301(b)(3).

[11] 15 U.S.C. 78o–3(b)(6).

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.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] 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.

Nasdaq has requested that the operative date be accelerated, and that the Commission waive the requirement that it provide written notice of its intent to file the proposed rule change more than five business days prior to the date of filing of the proposed rule change.

The Commission finds that it is appropriate to designate the proposal to become operative today because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date of the proposed rule change will allow NASD members additional time to covert their internal automated system to comply with the imposition of new 90-second trade reporting obligations between the hours of 5:15 p.m. and 6:30 p.m. Eastern Time, and to make uniform the start date 90-second trade reporting. For these reasons, the Commission finds good cause to waive the requirement that Nasdaq provide written notice of its intent to file the proposed rule change prior to the date of filing the proposal, and to designate that the proposal become operative today.[14]

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, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–64 and should be submitted November 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28458 Filed 10–29–99; 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 87c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42051; File No. SR–PCX–99–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Increase Lead Market Maker Concentration Levels From 10% to 15%

October 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] notice is hereby given that on September 15, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations's Statement of the Terms of Substance of the Proposed Rule Change

Currently, PCX Rule 6.82(e)(3) states that in the absence of extraordinary circumstances, as determined by the PCX's Options Allocation Committee, no Lead Market maker ("LMM") may be allocated more than 10% of the number of issues traded on the options floor. The PCX proposes to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the Options Allocation Committee may allocate to an LMM from 10% to 15% of the number of issues traded on the options floor. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are brackets.

* * * * *

Rule 6.82

(a)–(d)—No Change.

(e)(1)–(2)—No Change.

(3) Concentration of Issues. In the absence of extraordinary circumstances, as determined by the Options Allocation Committee, no LMM may be allocated more than [10%] *fifteen percent (15%)* of the number of issues traded on the Options Floor.

(e)(4)—No Change.

(f)–(h)—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, PXC rule 6.82(e)(3) states that in the absence of extraordinary circumstances, as determined by the Options Allocation Committee, no LMM may be allocated more than 10% of the number of issues traded on the options floor. The Exchange proposes to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the Options Allocation Committee may allocate to an LMM from 10% to 15% of the number of issues traded on the options floor.

The Exchange proposes this change for several reasons. First, the Exchange recently filed with the Commission a proposed rule change which the Exchange anticipates will reduce the total number of issues traded on the options floor.[2] The Exchange believes that the Continued Listing Fee will cause a significant number of issues to be delisted, thus lowering the total number of issues that an LMM may hold.[3]

Second, the Exchange believes that it is necessary in today's competitive environment to provide flexibility to LMMs to allow them to be allocated additional issues. The Exchange proposes this change to allow its LMMs to be on equal footing with specialists and Designated Primary Market Makers ("DPMs") on other options exchanges with respect to the number of issues that may be allocated to them.[4] The Exchange believes that the current 10% cap is unnecessarily low and that an increase in concentration levels is consistent with rules and guidelines of other options exchanges.

2. Statutory Basis

The PCX believes that proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to facilitate transactions in securities, perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any 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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–35 and should be submitted by November 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28455 Filed 10–29–99; 8:45 am]

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[2] *See* File No. SR–PCX–99–32. The proposal establishes a Continued Listing Fee that is designed to more fairly allocate the costs and expenses involved in supporting the trading of all listed options and to eliminate unfair burdens on options issues that generate revenue above the threshold of $500 per month. Under the proposal, the PCX will calculate all volume-based, trading-related revenues generated by each option issue over a trailing average of three calendar months to determine whether an option issue meets the $500 threshold. The PCX will assess a Continued Listing Fee on each option issue that fails to produce revenue of more than $500 per month through a combined total of transaction, comparison and data entry fees over the trailing average of three calendar months. The proposal is pending with the Commission.

[3] For example, if the Exchange lists 800 issues, then under current PCX rule 6.82(e)(3) an LMM may be allocated up to 80 (10% of 800) of those issues. If the Exchange delists 200 of those issues, leaving a total of 600 issues listed on the Exchange, then an LMM may be allocated up to 60 issues (10% of 600).

[4] In this regard, the PCX represents that it is not aware of any limitations under American Stock Exchange ("Amex") rules in the number of issues in which an Amex specialist may be registered. In addition, the PCX notes that Chicago Board Options Exchange ("CBOE") Regulatory Circular RG99–135 states that CBOE's Modified Trading System Appointment Committee will review the number of options classes allocated to a DPM if the DPM meets two of the following three criteria: (1) the number of classes allocated to the DPM is 25% or more of the total number of classes traded on the CBOE (excluding DJX, NDX, OEX, and SPX); (2) the volume in the classes allocated to the DPM is 25% or more of the total volume of CBOE (excluding DJX, NDX, OEX, and SPX); and (3) the number of appointments held by the DPM is 25% or more of the total number of DPM appointments effective on CBOE.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42058; File No. SR–Phlx–99–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Assessment of a Capital Funding Fee

October 22, 1999.

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 October 1, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx is proposing to amend its schedule of dues, fees, and charges to charge the owners of each of the 505 Exchange memberships a monthly capital funding fee of $1,500 per membership.[3] This fee will remain in effect for 36 consecutive months and will provide funding for capital improvements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx is prosing to amend its fee schedule to include a monthly fee of $1,500, per membership, charged to each owner of the Exchange's 505 memberships.[4] The monthly fee will be due on the last business day of the previous calendar month. Thus, the owner is responsible for paying the entire subsequent month's fee on the last business day of the prior month. The Exchange intends to segregate the funds generated from this $1,500 fee from Phlx's general funds. This fee will remain in effect for 36 consecutive months. At the end of the 36-month period, the Exchange will reevaluate its long-term financing plan to determine whether this fee should continue.

This monthly fee will be treated like a contribution to capital and will provide funding for technological improvements and other capital needs.[5] Specifically, it is intended to fund capital purchases, including hardware for capacity upgrades, development efforts for decimalization, trading floor expansion, and communication enhancements. The revenue from the fees will assist in allowing the Exchange to remain competitive in the current capital markets environment.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[6] in general, and with Section 6(b)(4),[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members. The Exchange believes that the capital funding fee is reasonable and equitable because it is imposed on every seat owner and will provide important funding for capital improvements. In reviewing this proposal, the Commission has considered its impact of efficiency, competition, and capital formation.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that it does not believe that the proposed rule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become immediately effective upon filing pursuant to Rule 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder because it establishes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Phlx. All submissions should refer to File No. SR–Phlx–99–43 and should be submitted by November 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28456 Filed 10–29–99; 8:45 am]

BILLING CODE 8010–01–M

[3] Telephone conversation between Marla Chidsey, Law Clark, Division of Market Regulation, Commission, and Cynthia Hoekstra, Counsel, Phx (October 20, 1999).

[4] For the purposes of this proposal, an "owner" means any person or entity who holds equitable title to a membership in the Exchange.

[5] This fee is distinguished from the technology fee that the Exchange implemented in 1997. The technology fee was intended to cover system software modifications, upgrades to the operating systems on the Exchange's trading floors, Year 2000 modifications, specific system development costs, hardware upgrades to handle expected increased trading volumes, and anticipated increases due to SIAC and OPRA communication changes. *See* Securities Exchange Act Release No. 38394 (March 12, 1997) 62 FR 13204 (March 19, 1997) SR–Phlx–97–09).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3150]

Culturally Significant Objects Imported for Exhibition Determinations: "Raphael and Titian: The Renaissance Portrait"

DEPARTMENT: 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 of October 19, 1999, I hereby determine that the objects to be included in the exhibition

"Raphael and Titian: The Renaissance Portrait," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with a foreign lender. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, Chicago, Illinois, from on or about December 15, 1999, to on or about March 19, 2000, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Lorie J. Nierenberg, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6084). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: October 26, 1999.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 99–28540 Filed 10–29–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3151]

Modification of Description of "Territory of Afghanistan Controlled by The Taliban" in Executive Order 13129

Executive Order 13129 of July 4, 1999 blocks property and prohibits transactions with the Taliban. Under section 4(d) of this Order, the Secretary of State, in consultation with the Secretary of the Treasury, is authorized the modify the description of the term "territory of Afghanistan controlled by the Taliban." Acting under the authority delegated to me by the Secretary of State on October 14, 1999, and in consultation with the Secretary of the Treasury, I hereby modify the description of the term "territory of Afghanistan controlled by the Taliban" to include the City of Kabul.

This notice shall be published in the **Federal Register**.

Dated: October 21, 1999.

Thomas R. Pickering,

Under Secretary of State for Political Affairs, U.S. Department of State.

[FR Doc. 99–28541 Filed 10–29–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders of Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on September 30, 1999. This publication ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW, Suite PL 200–A, Washington, DC 20590: telephone: (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number.

The indexes are published on a quarterly basis (*i.e.*, January, April, July, and October.) This publication represents the quarter ending on March 31, 1999.

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of these indexes have appeared in the **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90	55 FR 45984; 10/31/90
10/1/90–12/31/90 ..	56 FR 44886; 2/6/91
1/1/91–3/31/91	56 FR 20250; 5/2/91
4/1/91–6/30/91	56 FR 31984; 7/21/91
7/1/91–9/30/91	56 FR 51735; 10/15/91
10/1/91–12/31/91 ..	57 FR 2299; 1/21/92
1/1/92–3/31/92	57 FR 12359; 4/9/92
4/1/92–6/30/92	57 FR 32825; 7/23/92
7/1/92–9/30/92	57 FR 48255; 10/22/92
10/1/92–12/31/92 ..	58 FR 5044; 1/19/93
1/1/93–3/31/93	58 FR 21199; 4/19/93
4/1/93–6/30/93	58 FR 42120; 8/6/93
7/1/93–9/30/93	58 FR 58218; 10/29/93
10/1/93–12/31/93 ..	59 FR 5466; 2/4/94
1/1/94–3/31/94	59 FR 22196; 4/29/94
4/1/94–6/30/94	59 FR 39618; 8/3/94
7/1/94–12/31/94	60 FR 4454; 1/23/95
1/1/95–3/31/95	60 FR 19318; 4/17/95
4/1/95–6/30/95	60 FR 36814; 7/18/95
7/1/95–9/30/95	60 FR 53228; 10/12/95
10/1/95–12/31/95 ..	61 FR 1972; 1/24/96
1/1/96–3/31/96	61 FR 16955; 4/18/96
4/1/96–6/30/96	61 FR 37526; 7/18/96
7/1/96–9/30/96	61 FR 54833; 10/22/96
10/1/96–12/31/96 ..	62 FR 2434; 1/16/97
1/1/97–3/31/97	62 FR 24533; 5/2/97
4/1/97–6/30/97	62 FR 38339; 7/17/97
7/1/97–9/30/97	62 FR 53856; 10/16/97
10/1/97–12/31/97 ..	63 FR 3373; 1/22/98
1/1/98–3/31/98	63 FR 19559; 4/20/98
4/1/98–6/30/98	63 FR 37914; 7/14/98
7/1/98–9/30/98	63 FR 57729; 10/28/98
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The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. In addition, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callaghan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld). (A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice.)

Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet is also set forth at the end of this notice.

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108.13	90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines.
108.18	98.6 Continental Airlines; 99–12 TWA.
121.133	90–18 Continental Airlines.
121.153	92–48 & 92–70 USAir; 95–11 Horizon; 96–3 America West Airlines; 95–24 Horizon; 96–25 USAir; 97–21 Delta; 97–30 Emery Worldwide Airlines.
121.221	97–30 Emery Worldwide Airlines.
121.317	92–37 Giuffrida; 94–18 Luxemburg; 99–6 Squire.
121.318	92–37 Giuffrida.
121.367	90–12 Continental Airlines; 96–25 USAir.
121.571	92–37 Giuffrida.
121.575	98–11 TWA.
121.577	98–11 TWA.
121.589	97–12 Mayer.
121.628	95–11 Horizon; 97–21 Delta; 97–30 Emery Worldwide Airlines.
135.1	95–8 Charter Airlines; 95–25 Conquest.
135.5	94–3 Valley Air; 94–20 Conquest Helicopters; 95–25 Conquest; 95–27 Valley Air; 96–15 Valley Air.
135.25	92–10 Flight Unlimited; 94–3 Valley Air, 95–27 Valley Air; 96–15 Valley Air.

135.63	94–40 Polynesian Airways; 95–17 Larry's Flying Service; 95–28 Atlantic; 96–4 South Aero; 99–7 Premier Jets.
135.87	90–21 Carroll.
135.95	95–17 Larry's Flying Service.
135.179	97–11 Hampton.
135.185	94–40 Polynesian Airways.
135.243	99–1 Evergreen Helicopters.
135.263	95–9 Charter Airlines; 96–4 South Aero.
135.267	95–8 Charter Airlines; 95–17 Larry's Flying Service; 96–4 South Aero.
135.293	95–17 Larry's Flying Service; 96–4 South Aero.
135.343	95–17 Larry's Flying Service.
135.411	97–11 Hampton.
135.413	94–3 Valley Air 96–15 Valley Air; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–16 Mauna Kea.
135.421	93–36 Valley Air; 94–3 Valley Air; 96–15 Valley Air.
135.437	94–3 Valley Air; 96–15 Valley Air.
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145.1	97–10 Alphin.
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145.45	97–10 Alphin.
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145.49	97–10 Alphin.
145.53	90–11 Thunderbird Accessories.
145.57	94–2 Woodhouse; 97–9 Alphin; 97–32 Florida Propeller.
145.61	90–11 Thunderbird Accessories.
191	90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines; 98–6 Continental Airlines; 99–12 TWA.
298–1	92–10 Flight Unlimited.
302.8	90–22 USAir.

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1.47	92–76 Safety Equipment.
171 et seq.	95–10.Diamond.
171.2	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
171.8	92–77 TCI.
172.101	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 96–26 Midtown.
172.200	92–77 TCI; 94–28 Toyota; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
171 et seq	95–10 Diamond.
171.2	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
171.8	92–77 TCI.
172.101	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 96–26 Midtown.
172.200	92–77 TCI; 94–28 Toyota; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
172.202	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.203	94–28 Toyota.
172.204	92–77 TCI 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.300	94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
172.301	94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.304	92–77 TCI; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.400	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.402	94–28 Toyota.
172.406	92–77 TCI.
173.1	92–77 TCI: 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
173.3	94–28 Toyota; 94–31 Smalling; 98–2 Carr.
173.6	94–28 Toyota.
173.22	94–28 Toyotal; 94–31 Smalling; 98–2 Carr.
173.24	94–28 Toyota; 95–16 Mulhall;
173.25	94–28 Toyota.
173.27	92–77 TCI.
173.62	98–2 Carr.
173.115	92–77 TCI.
173.240	92–77 TCI.
173.243	94–28 Toyota.
173.260	94–28 Toyota.
173.266	94–28 Toyota; 94–31 Smalling.
175.25	94.31 Smalling.

191.5	97–13 Westair Commuter.
191.7	97–13 Westair Commuter.
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554	90–18 Continental Airlines; 90–21 Carroll; 95–12 Toyota.
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557	90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines; 94–28 Toyota.
705	95–14 Charter Airlines.
5332	95–27 Valley Air.
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46110	96–22 Woodhouse; 97–1 Midtown Neon Sign.
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Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Current as of September 30, 1999)

The digests of the Administrator's final decisions and orders are arranged by order number, and summarize briefly key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from July 1, 1999, to September 20, 1999. The FAA will publish non-cumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested person should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Warbelow's Air Ventures, Inc.

Order No. 99–4 (7/1/99)

Motion to Dismiss Denied. Good cause exists to excuse Respondent's late-fling (by 8 days) of an appeal brief. Counsel had no prior experience with FAA civil penalty appeals and simply calculated the deadline starting from the wrong date (the service date of the notice of appeal rather than that of the initial decision). Counsel took steps to protect against the danger of default. Counsel has committed no previous defaults in this case, and the appeal brief was only 9 days late. Complainant has neither alleged nor shown any prejudice resulting from the delay. Complainant is granted 30 days from the service date of this order, plus an additional 5 days under 14 CFR 13.211(e), to file a reply brief.

In the Matter of Africa Air Corporation

(Order No. 99–5 (8/31/99)

Settlement offers. Federal Rule of Evidence 408's public policy purpose of encouraging frank settlement discussions is as compelling in FAA civil penalty proceedings as it is in Federal trials. Hence, its guidance will be followed in these proceedings. Not only was it appropriate for the law to exclude the offer to settle in the last paragraph of the letter but it was also appropriate to exclude any admissions contained elsewhere in the letter.

Evidentiary admissions rebuttable. It is unclear whether a conciliatory letter on behalf of Respondent should be regarded as a settlement offer and therefore excluded. It is unlikely that the law judge would have found the evidentiary admission contained this other letter as compelling an outcome favoring Complainant in light of other rebutting evidence that the law judge found to be persuasive. Evidentiary admissions, unlike judicial admissions, are rebuttable through the introduction of other evidence.

Failure to prove that the oil lines in the wings constituted a major alteration. Inspector's testimony was too vague, as a result of the fact that he never looked in the wings, to be persuasive on the issue of whether the oil lines in the wings constituted a major alteration.

In the Matter of James K. Squire

Order No. 99–6 (8.31/99)

Smoking in aircraft lavatory. The law judge made credibility assessments in favor of the flight attendants who testified that the smell of smoke intensified when Mr. Squire opened the door of the lavatory. The Administrator deferred to that assessment. None of Mr. Squire's arguments compelled a reversal of the law judge's findings that Mr. Squire had been smoking in the aircraft lavatory. To sustain its burden of proof, Complainant did not have to resolve the question why the smoke alarm had not gone off in the lavatory if Mr. Squire had been smoking in there.

No right to appointed counsel. Mr. Squire's argument that the case should be dismissed because the law judge failed to appoint counsel for him (because he could not afford to hire counsel) was rejected. There is no right to assigned counsel in FAA civil penalty proceedings.

Mr. Squire was assessed $719 civil for violations of 14 C.F.R. 121.317 (g), (h) and (i).

In the Matter of the Premier Jets, Inc.

Order No. 99–7 (8/31/99)

Appeal Denied. In its appeal of the law judge's decision finding that it committed several violations of a flight time recordkeeping rule, Respondent argues that the FAA inspectors should not have examined its flight logs because they were not part of the "individual record" of each pilot under 14 CFR 135.63. Without the flight logs, FAA inspectors would not have been able to determine conclusively that the crew duty time sheets contained errors. Contrary to Respondent's contentions, the inspectors acted appropriately when they examined the flight logs. Indeed, if the inspectors had chosen to ignore or overlook any compliance concerns raised by their examination of the crew duty time sheets, they would have been abrogating their critical safety duties.

Second, Respondent argues that it committed no violation because the flight logs were part of the "individual record" of each pilot's flight time. Respondent did not, however, keep the flight logs as part of the individual record of each pilot. Instead, the flight logs for all of Respondents' pilots for a single month were kept in the same file. Where there was more than one pilot for a flight, multiple pilots appeared on a single flight log. Moreover, when Respondent gave the inspectors its individual records, it gave them only the crew duty time sheets and not the flight logs.

This decision denies Respondent's appeal and affirms the law judge's decision assessing $1,125.

In the Matter of Michael McDermott

Order No. 99–8 (8/3/99)

DMS No. FAA–1999–5516

Notice of appeal construed as appeal brief; appeal denied. Mr. McDermott filed a notice of appeal but no appeal brief. The notice of appeal was construed as an appeal brief because it was sufficiently detailed. However, the argument presented by Mr. McDermott was not compelling. Mr. McDermott argued that he had moved several times during the precomplaint stages of these proceedings. That argument does not excuse Mr. McDermott's failure to file to an answer.

In the Matter of Lifeflite Medical Air Transport, d/b/a American Native Medical Air

Order No. 99–9 (8/31/99)

Remand to law judge. The law judge issued an order assessing civil penalty against Lifeflite Medical Air Transport based on his belief that Lifeflite has not filed an answer. However, Lifeflite had filed an answer. The law judge's order is reversed, and the case is remanded to the Office of Hearings. The law judge must decide whether good cause existed for Lifeflite's failure to file a timely answer.

In the Matter of Azteca Aviation, Inc.

Order No. 99–10 (8/31/99)

Complainant is ordered to withdraw the orders assessing civil penalty. The law judge dismissed these cases and terminaied these proceedings based on his understanding that the parties had settled the case. However, Respondent never filed any document indicating that it agreed to the settlement or to withdraw its requests for hearing. Respondent wrote to the law judge that neither he nor his attorney had ever agreed to withdraw. Complainant was ordered to withdraw the orders assessing civil penalty. Cases remanded to the law judge.

In the Matter of Evergreen Helicopters of Alaska, Inc.

Order No. 99–11 (8/31/99)

Parties Granted Opportunity to Brief New Issues. Evergreen, a U.S. air carrier, holds an FAA-issued certificate to conduct commuter and on-demand operations under 14 C.F.R. Part 135. In February 1996, under contract with the United Nations, Evergreen transported passengers on a U.S.-registered airplane, using Angolan pilots on approximately 20 flights inside Angola. The pilots held only Angolan airline transport pilot certificates; they did not hold U.S. airline transport pilot certificates.

Complainant alleged that Evergreen violated 14 CFR 135.243(a) by using pilots who lacked U.S. airline transport pilot certificates. The law judge, however, dismissed Complainant's case, holding that Complainant had failed to meet its burden of proof. Complainant has appealed.

Complainant is granted 30 days from the service date of this order, plus the 5 additional days provided by 14 CFR § 13.211(e), to brief the following issues:

1. What is the FAA's specific statutory authority for bringing the instant civil penalty action against Evergreen, given that neither the departure nor arrival points of any of the flights in question involved a point inside the U.S., and there is no evidence in the record that the flights at issue had any contact with other flights to or from the U.S.?

2. A letter of interpretation issued on January 28, 1985, issued by the FAA Assistant Chief Counsel for Regulations and Enforcement indicates that a holder of a foreign pilot license may indeed

operate a U.S.-registered airplane for compensation or hire inside the foreign country, even if the pilot does not hold a U.S. airline transport pilot certificate. Is Complainant's position in this case consistent with the 1985 interpretation, or is it distinguishable?

Evergreen is granted 35 days from the service date of Complainant's documents briefing the new issues to reply to Complainant's briefing of the new issues.

Commercial Reporting Services of the Administrators

Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications.

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publication, P.O. 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN–FAA).
- LEXIS [Transportation (TRANS) Library, FAA file].
- Compuserve.
- FedWord.

Docket

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW, 926A, Washington, DC, 20591 (tel. no. 202–267–3641). The clerk of the FAA Hearing Docket is Ms. Stephanie McCain. All documents that are required to be filed in civil penalty proceedings must be filed with the FAA Hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210). Materials contained in the dockets of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Hearing Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW, Room PL–401, Washington, DC 20590, (tel. no. 202–366–9329.) While the originals will be retained in the FAA Hearing Docket, the DOT Docket will scan copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address; http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and coping at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW, Room 926A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Regional Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City. OK 73125; (405) 954–3296.

Office of the Regional Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Regional Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Regional Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Regional Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Regional Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Regional Counsel for the Northwest Mountain Region (ANM–7)), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (425) 227–2007.

Office of the Regional Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Regional Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087.

Office of the Regional Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Regional Counsel for the Western-Pacific Region (AWP–7, Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725–7100.

Issued in Washington, DC on October 26, 1999.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 99–28510 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In September 1999, there were five applications approved. This notice also includes information on one application, approved in August 1999, inadvertently left off the August 1999 notice. Additionally, eight approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Monroe County, Key West, Florida.

Application Number: 99–04–C–00–EYW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $946,503.

Earliest Charge Effective Date: November 1, 1999.

Estimated Charge Expiration Date: May 1, 2001.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection at Key West International Airport (EYW) and Use at EYW:

Construct electrical vault including installation of equipment and standby generator.
Acquire rapid response vehicle.
Environmental mitigation.
Replace existing runway 9/27 lighting.
Replace existing taxiway lighting.
Resurface runway 9/27 including grooving and marking.
Resurface taxiway A and connecting taxiways.
Implement Part 150 noise study recommendations—phase 1.

Brief Description of Projects Approved for collection at EYW and Use at Marathon Airport:

Construct service road including landscaping.
Replace medium intensity taxiway lights on parallel and connecting taxiways.
Resurface taxiway A and connecting taxiways.
Construct and mark two taxiway extensions.
Environmental mitigation.
Construct general aviation apron.
Construct general aviation apron expansion.

Decision Date: August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Miguel A. Martinez, Orlando Airports District Office, (407) 812–6331, extension 23.

Public Agency: Jackson Municipal Airport Authority, Jackson, Mississippi.

Application Number: 99–03–C–00–JAN.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $5,577,870.

Earliest Charge Effective Date: March 1, 2000.

Estimated Charge Expiration Date: January 1, 2003.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Jackson International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal renovations.
Rehabilitate east parallel taxiway.

Decision Date: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: David Shumate, Jackson Airports District Office, (601) 965–4628.

Public Agency: Capital Region Airport Commission, Richmond, Virginia.

Application Number: 99–03–C–00–RIC.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $75,846,839.

Earliest Charge Effective Date: November 1, 2000.

Estimated Charge Expiration Date: July 1, 2015.

Class of Air Carriers not Required to Collect PFC'S: Part 135 on-demand air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Richmond International Airport.

Brief Description of Project Approved for Collection and Use: Terminal roadways and elevated platform.

Brief Description of Project Approved for Collection Only: Terminal building addition and modifications.

Decision Date: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Washington Airports District Office, (703) 661–1363.

Public Agency: Port of Bellingham, Bellingham, Washington.

Application Number: 99–04–C–00–BLI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,400,000.

Earliest Charge Effective Date: January 1, 2000.

Estimated Charge Expiration Date: March 1, 2004.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Bellingham International Airport.

Brief Description of Project Approved for Collection and Use: Terminal design.

Brief Description of Project Approved for Collection Only: Terminal rehabilitation and expansion.

Brief Description of Project Approved for Use Only: Alpha taxiway pullout on north.

Decision Date: September 21, 1999.

FOR FURTHER INFORMATION CONTACT: Mary E. Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: Metropolitan Airport Authority of Rock Island County, Moline, Illinois.

Application Number: 99–03–C–00–MLI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $12,879,837.

Earliest Charge Effective Date: July 1, 2009.

Estimated Charge Expiration Date: July 1, 2023.

Class of Air Carriers not Required to collect PFC'S: Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Quad City International Airport.

Brief Description of Projects Approved for Collection and Use:

Runway 9/27 rejuvenation.
Passenger terminal/concourse reconstruction and expansion.

Decision Date: September 23, 1999.

FOR FURTHER INFORMATION CONTACT: Richard A. Pur, Chicago Airports District Office, (847) 284–7527.

Public Agency: City of Morgantown, West Virginia.

Application Number: 99–05–C–00–MGW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $192,739.

Earliest Charge Effective Date: July 1, 2001.

Estimated Charge Expiration Date: July, 1, 2005.

Classes of Air Carriers Not Required to Collect PFC'S:

(1) Part 135 air carriers, (2) Part 91 air carriers, and (3) any unscheduled carriers operating under part 121.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Morgantown Municipal Airport.

Brief Description of Projects Approved for Collection and use:

Rehabilitate access road.
Install lights on access road.
Acquire aircraft rescue and firefighting (ARFF)
communication equipment.
Design rehabilitation of runway 18/36.
Rehabilitation of runway 18.36.

Brief Description of Projects Approved for Collection Only:

Install perimeter fence.
Design and contruct ARFF/maintenance building.
Decision Date: September 29, 1999.

FOR FURTHER INFORMATION CONTACT: Elonza Turner, Beckley Airports Field Office, (304) 252–6212.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
94–01–C–05–CVG, Covington, KY	08/12/99	37,146,000	$32,718,000	02/01/96	11/01/95
95–02–C–02–CVG, Covington, KY	08/12/99	85,441,000	80,752,000	05/01/99	05/01/99
98–03–C–01–CVG, Covington, KY	08/12/99	21,097,000	21.923,000	01/01/00	09/01/99
98–04–C–01–CVG, Covington, KY	08/12/99	32.911,000	32,580,000	05/01/00	02/01/00
92–01–C–02–AOO, Altoona, PA	08/27/99	118,500	156,054	12/01/99	10/01/99
96–02–C–01–AOO, Altoona, PA	08/27/99	NA	NA	12/01/99	10/01/99
98–03–C–02–CVG, Covington, KY	09/07/99	21,923,000	22,005,000	09/01/99	09/09/99
98–04–C–02–CVG, Covington, KY	09/07/99	32,580,000	33,233,000	02/01/00	03/01/00

Issued in Washington, DC. on October 25, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–28511 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[99–01–I–00–BFF]

Notice of Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at the Western Nebraska Regional Airport, Scottsbluff, Nebraska

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 a PFC at the Western Nebraska Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158.

DATES: Comments must be received on or before December 1, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rick A. Meter, Director of Public Works, Scotts Bluff Country, at the following address: Western Nebraska Regional Airport, P.O. Box 690, Gering, Nebraska 69341.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Scotts Bluff County under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. 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 to impose a PFC at the Western Nebraska Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 7, 1999, the FAA determined that the application to impose a PFC submitted by Scotts Bluff County was not substantially complete within the requirements of § 158.25 of Part 158. The County of Scotts Bluff submitted supplemental information on September 24, 1999, to complete the application. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than January 22, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 2000.

Proposed charge expiration date: April 2003.

Total estimated PFC revenue: $108.000.

Brief description of proposed project(s): Renovate terminal to improve disability access, baggage handling and passenger flow.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Western Nebraska Regional Airport.

Issued in Kansas City, Missouri on October 15, 1999.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 99–28512 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Teton and Pondera Counties, Montana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway improvement project in Teton County and Pondera County, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Program Development Engineer, Federal Highway Administration, 2880 Skyway Drive, Helena, Montana 59602; Telephone: (406) 449–5306 ext 239; or Joel M. Marshik, Manager, Environmental Services, Montana Department of Transportation, 2701 Prospect Avenue, Helena, Montana 59620; Telephone: (406) 444–7632.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a 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 database at *http://www.access.gpo.gov/nara.*

Background

The FHWA, in cooperation with the Montana Department of Transportation (MDT) will prepare an environmental impact statement (EIS) on the proposal to reconstruct, widen, and realign US 89 from Fairfield to Dupuyer.

Comments are being solicited from appropriate Federal, State, and local agencies and from private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public scoping meetings at two different locations will be held in November 1999. Additional information meetings will be scheduled during the course of the study. In addition, a formal public hearing will be held after the draft EIS has been prepared. Public notice will be given of the time and place of the public scoping meetings, information meetings, and the formal public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

Comments and/or suggestions from all interested parties are requested to ensure that the full range of all issues, and significant environmental issues in particular, are identified and reviewed. Comments or questions concerning this proposed action and/or its EIS should be directed to the FHWA or the MDT at the addresses listed previously.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: October 21, 1999.

Dale Paulson,

Program Development Engineer.

[FR Doc. 99–28460 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

State of Connecticut

Department of Transportation

National Railroad Passenger Corporation

(Waiver Petition Docket Number FRA–1999–6167)

The Connecticut Department of Transportation and the National Railroad Passenger Corporation jointly seeks a temporary waiver of compliance with Passenger Equipment Safety Standards, Title 49 CFR Part 238.235, which requires that by December 31, 1999, each power operated door that is partitioned from the passenger compartment shall be equipped with a manual override adjacent to that door. The petitioners request that the temporary waiver extend the December 31, 1999 compliance date to July 1, 2001. The petitioners state that they need this added time to meet this requirement. They seek this waiver for ten Bombardier Project 34, push-pull coaches.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g. Waiver Petition Docket Number FRA–1999–6167) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level) 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m. to 5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on October 25, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–28466 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

CSX Transportation

[Docket Number FRA–1999–6252]

CSX Transportation (CSXT) seeks a waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR Part 229. Specifically, CSXT requests relief from the requirements of 49 CFR 229.27(a)(2) Annual Tests and 49 CFR 229.29(a) Biennial Tests, as solely applicable to all present and future installations of the New York Air Brake Corporation (NYAB) Computer Controlled Brake (CCB) Systems on CSXT locomotives. Part 229.27(a)(2) requires that, "Brake cylinder relay valve portions, main reservoir safety valves, brake pipe vent valve portions, feed and reducing valve portions in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested" at intervals that do not exceed 368 calendar days. Part 229.29(a) requires in part that "* * * all valves, valve portions, MU locomotive brake cylinders and electric-pneumatic master controllers in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired , and tested at intervals that do not exceed 736 calendar days." CSXT requests these provisions be temporarily waived to accommodate the implementation of a Test Plan to prove the new technology incorporated in this brake system is more reliable and safer in the Rail Transportation Industry, with the intent of moving to a component repair as required, performance-based COT&S criterion.

The time interval for the requirements of Part 229.29(a) was extended to 1,104 calendar days in 1985 for 26L Brake equipment, based on proven service reliability with the evolution of improved components. The time interval for CCB equipment was extended to 1,840 calendar days in 1996, per FRA Test Waiver, H–95–3.

CSXT states that the CCB equipment used on their locomotives provides reliable operation based upon the availability of diagnostics, which continuously monitors the function of all critical components. When the CCB diagnostics detects operational characteristics outside allowed limits, the system automatically takes appropriate action to assure safety. Because failures are detected and fault action is automatically initiated, CSXT believes that COT&S intervals can be increased without any impact on safety.

CSXT bases their Test Plan on the following: (1) The reduction of mechanical devices through the use of micro-processor logic; (2) the replacement of "O" ring technology with "poppet" technology; (3) the immediate detection of faults or improper operation through the vigilance of a microcomputer; (4) the control of faults to a known safe condition; (5) emergency brake initiation and brake cylinder pressure development is accomplished mechanically as well as electronically under any condition; and (6) the performance of CCB equipment during current FRA Waiver H–95–3.

The Test Plan is designed to determine the feasibility of a "performance-based" COT&S. The initial duration of the test shall be six years from the in-service date of the locomotives listed in the control group. At the end of the six years, an evaluation and review will be made to assess whether an extension of an additional year for the test will be granted. Data collection for this test shall be accomplished within the present structure of the CSXT Mechanical Operations group, with assistance of NYAB Field Service Engineering. The test plan has specific requirements to tag and record detailed information on all faulty brake components removed from locomotives equipped with the CCB system and covered by this waiver. Data analysis for confirmation of failures will be determined by CSXT, NYAB Field Service Engineering and/or NYAB Service Department. A "criticality rating" will be assigned to each component failure and all information will be compiled for an evaluation of performance.

The periodic (92-day) test, per § 229.23, will be performed on all locomotives in the test group and replacement of all filtering devices and dirt collectors will be done annually. CSXT, NYAB, and FRA will perform an annual test of the CCB system, per NYAB Test ABT–2771, on select locomotives from the control group. The results of the tests and the information gathered throughout the year will be used to determine if the test plan can be extended for another year.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–6252) and must be submitted to the Docket Management Facility, Room PL–401, (Plaza Level) 400 Seventh Street, SW, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC. on October 25, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–28465 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance; Petition for Exemption for Technological Improvements

In accordance with Title 49 Code of Federal Regulations (CFR) Sections 211.9 and 211.41, and 49 U.S.C. 20306, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations and a request for exemption of certain statutory provisions. The individual petition is described below, including the party seeking relief, the regulatory and statutory provisions involved, the nature of the relief being sought and the petitioner's arguments in favor of relief.

Santa Clara County Transit District

[FRA Waiver Petition No. FRA–1999–6254]

The Santa Clara County Transit District, also known as the Santa Clara Valley Transportation Authority ("VTA") seeks a permanent waiver of compliance from certain CFR parts of Title 49, specifically: part 214, Railroad Workplace Safety; part 217, Railroad Operating Rules; part 219, Control of Alcohol and Drug Use; part 220, Railroad Communications; part, 221 Rear End Marking Device—Passenger, Commuter and Freight Trains; part 223, Safety Gazing Standards—Locomotives, Passenger Cars and Cabooses; part 225, Railroad Accidents/Incidents—Report Classification, and Investigations; part 228, Hours of Service of Railroad Employees; part 229, Railroad Locomotive Safety Standards; part 231 Railroad Safety Appliance Standards; part 234, Grade Crossing Signal System Safety; part 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; part 238, Passenger Equipment Safety Standards; part 239, Passenger Train Emergency Preparedness; part 240, Qualification and Certification of Locomotive Engineers; and the statutory requirements 49 U.S.C. §§ 20301 through 20305.

Initial service began on the VTA light rail system in 1987, and by 1991 the 21-mile system was operational. With 33 stations and free parking at 11 park-and-ride lots, the light rail system currently provides service in California to the residential area of South San Jose, the industrial area of Santa Clara, the San Jose Civic Center, the North First Street industrial area and downtown San Jose.

VTA's Tasman West Extension, scheduled to open on December 17, 1999, is a 7.6-mile extension of VTA's light rail system. Adding 11 new stations between Old Ironsides Station in Santa Clara and downtown Mountain View, the Tasman West Extension will extend VTA's light rail system further into Silicon Valley and provide transit accessibility to major high technology employers.

The Tasman West Extension includes approximately 1.6 miles of track that

VTA acquired from the Southern Pacific Transportation Company ("SP") in 1994, known as the "Moffett Drill Track." This short segment of track (hereinafter referred to as the "Drill Track") constitutes a middle section of the Tasman West Extension. It also will be used on an occasional basis by the Union Pacific Railroad (UPRR), the successor by merger with SP, for freight deliveries to the National Aeronautics and Space Administration ("NASA") and other federal agencies that may be located in the Ames Research Center at the Moffett Federal Airfield; Moffett Federal Airfield is located at one end of the Drill Track.

VTA seeks approval of shared use and waiver of regulations from the Federal Railroad Administration ("FRA") for light rail passenger operations on the Drill Track. FRA has jurisdiction over this portion of the VTA because it will be connected to the general railroad system of transportation.

In each section entitled "Justification," FRA merely sets out VTA's justifications which are included in its petition. In doing so, VTA references the proposed Joint Policy Statement on Shared Used of the General Railroad System issued by FRA and the Federal Transit Administration (FTA) (64 FR 28238; May 25, 1999) ("Policy Statement"). The proposed policy statement suggests that regulation of light rail service on the general rail system, under conditions of temporal separation from conventional rail movements, be handled through application of complementary strategies. FRA regulations would generally be employed to address hazards common to light rail and conventional operations for which consistent handling is necessary, while other hazards would be handled under FTA's program of State Safety Oversight (49 CFR part 659). See proposed Policy Statement for details. Since FRA has not yet concluded its investigation of the planned VTA operation, the agency takes no position at this time on the merits of VTA's stated justifications. As part of FRA's review of the petition, the FTA will appoint a non-voting liaison to FRA's Safety Board, and that person will participate in the board's consideration of VTA's waiver petition.

Part 214 Roadway Worker Protection

Subpart C of part 214 sets forth requirements for the protection of roadway workers along railroad rights-of-way. These requirements are intended to help prevent accidents and injuries to railroad employees engaged in roadway maintenance activities.

Justification

VTA requests a waiver of the subpart C requirements during its period of operations over the Drill Track because VTA will be following its standard operating procedures and safety rules, as required by § 13.01 of California Public Utilities Commission (CPUC) General Order 143–A, § 3 of CPUC General Order 164–A, § 5 of the VTA Safety Plan and the Rulebook. Specifically, § 7 of the VTA Rulebook, entitled "Protection of Employees on Right of Way," sets forth the safety equipment, blue flag, and operating practice requirements designed to ensure the safety of VTA employees working along the right of way.

Under those rules, employees working along the right of way must wear visible safety vests. After dark, work crews also must have and use lanterns to alert trains to their presence. If emergency or repair work is done to vehicles on the main track, such vehicles must be tagged with blue flags or blue lights to alert workers. In addition to the required safety equipment, employees on the right of way are often working in a Work Zone or Reduced Speed Zone, established by the Operation Control Center (OCC), which gives the workers either the exclusive right to be on the track or requires trains moving through such zones to do so at reduced speed. When a train approaches a work zone, the operator is required to sound an audible warning of its approach. The work crew is then required to respond to the warning by either clearing the track and permitting the train to proceed, or by giving the train a stop signal until the crew can clear and permit the train to proceed. All work crews are required to call into OCC every 30 minutes to apprize OCC of their status and movements (if any). This allows OCC to notify trains of any changes in work crew locations. When performing work of 20 minutes or less, and when done without pneumatic tools, employees may be protected by "simple protection." In these circumstances, employees must report to OCC upon entering and exiting the right of way. OCC relays that information to trains in the area. If work extends beyond 20 minutes, permission to remain on the right-of-way must be renewed with OCC. The Rule 7 protections are similar to the FRA requirements, but tailored to the VTA operating environment. Currently in practice over the rest of the VTA light rail system, the rules have been effective at preventing injuries to employees working in the right of way.

Part 217 Railroad Operating Rules

Part 217 requires each railroad to provide training to employees on the operating rules and perform periodic operational tests to monitor compliance with the operating rules. Under this part, each railroad must also file copies of its operating rules with FRA. These requirements are intended to ensure the safety of railroad operations through employee knowledge of and compliance with operating rules.

Justification

VTA requests a waiver from all of the requirements of this part because VTA operating rule training and compliance monitoring will be carried on as required by § 13 of General Order 143–A. Under General Order 143–A, VTA is required to submit its operating rules to the CPUC, conduct initial and biennial training to employees on the operating rules, and conduct operational testing on a periodic basis. Section 5 of the VTA Safety Plan, and SOPs 1.5 and 1.9, contain additional operator training and testing requirements. These requirements will ensure that the VTA employees know and comply with VTA operating rules. This request is consistent with the FRA's position on the appropriate treatment of this part as stated in the Policy Statement (see Policy Statement at 28422).

Part 219 Control of Alcohol and Drug Use

Part 219, Control of Alcohol and Drug Use, prescribes minimum Federal safety standards for the control of alcohol and drug use by railroad workers for the purpose of preventing accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

Justification

VTA requests a waiver of all of the requirements of part 219 because all of the employees assigned to the VTA light rail system who would otherwise be covered employees under this part, are already covered employees subject to VTA's existing drug and alcohol program under the FTA rules at 49 CFR part 653, Prevention of Prohibited Drug Use in Transit Operations, and part 654, Prevention of Alcohol Misuse in Transit Operations. Subjecting certain employees to FRA regulations would create an administrative burden for VTA, both in terms of cost and recordkeeping, and in determining which employees were subject to which regulations on a given day.

The FTA regulations apply to recipients of Federal mass transit funds except those "specifically excluded"

because those recipient operating railroads regulated by the FRA. 49 CFR §§ 653.5 and 654.5. In such cases, a recipient is to follow FRA regulations in 49 CFR part 219 for its "railroad operations." However, such a recipient is still required to certify that it is in compliance with applicable rules and comply with parts 653 and 654 for its "non-railroad operations."

VTA is a recipient of Federal mass transit funds, and therefore, would be subject to the compliance certification provision of FTA's regulations at parts 653 and 654 for any railroad operations otherwise covered by FRA's regulations at 49 CFR part 219, and is currently subject to all of the requirements of parts 653 and 654 for VTA's bus and current light rail operations. If granted a waiver from the requirements of part 219, the subject light rail operations would automatically fall under the regulatory jurisdiction of FTA. Thus, all of the employees assigned to the LRT operation who would otherwise be covered employees under this part, would be subject to FTA's rules at parts 653 and 654.

Application of the FTA drug and alcohol rules, when implemented in compliance with the FTA rule, would provide a level of safety consistent with the policy underlying part 219. A basic review of the respective FRA and FTA regulations reveals that the regulations are quite similar in purpose, structure and substance. Both regulations are intended to enhance safety by prohibiting and eliminating misuse of drugs and alcohol which might otherwise result in accidents and injuries to employees and the traveling public. Both regulations provide for procedural and recordkeeping requirements to safeguard the integrity of the program, and provide privacy and due process protections for covered employees. Finally, both sets of regulations prohibit impaired employees from performing safety-sensitive functions and require testing of essentially the same personnel under the similar circumstances (*i.e.*, random, post-accident, reasonable suspicion, and return-to-duty testing, and in the case of drugs, pre-employment testing).

Although there are differences between the regulations, there are no major policy differences with respect to the need to eliminate drug and alcohol misuse or the primary importance of safety in transportation operations. The most obvious difference involves the application of penalties for non-compliance. Under FRA rules, a regulated entity found to be in violation of the rule may be subject to the assessment of civil penalties in accordance with a published schedule. The FTA regulations do not contain such a civil penalty structure. However, under the FTA regulations, compliance is a condition for eligibility for receipt of Federal funds. Non-compliance can result in suspension of eligibility for applicable Federal funding altogether. Thus, the severity of the potential penalty serves as a deterrent in the same way as the FRA civil penalty program.

Application of the FTA regulations will provide a level of safety similar to that provided by the FRA regulations. This request is consistent with the FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28422).

Part 220 Radio and Wireless Communication Procedures

Part 220 sets forth minimum requirements governing the use of radios and other wireless communications equipment in connection with railroad operations. These requirements are intended to enhance operational safety by facilitating communications among railroad employees and offices through the availability of radios and the use of standardized communications protocols.

Justification

VTA requests a waiver from all of the requirements of this part because radio communications on VTA light rail operations are conducted according to the requirements of § 4 of the Rulebook, "Radio Procedures" and SOPs 2.1, "Standard Two-Way Radio Procedures" and 2.5 "Radio Failure." Under the Rules and SOPs, light rail vehicles are equipped with radios and all personnel requiring two-way communications are provided with radios. The Rules and SOPs specify communication protocols addressing identification of speakers, proper use of radios, emergency communications, and procedures for communication in the event of radio failure. SOP 6.2 provides that all radio transmissions are governed and monitored by the Federal Communications Commission. In addition, compliance with these Rules and SOPs is monitored, as required in § 7 of the Safety Plan and Sections 3 and 4 of CPUC General Order 164–A. The VTA Rules and SOPs provide for an equivalent level of safety as the FRA rules. This request is consistent with FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28422).

Part 221 Rear End Marking Device—Passenger, Commuter and Freight Trains

Part 221 contains requirements that passenger, commuter, and freight trains be equipped with and display rear end marking devices. Part 221 also sets forth requirements related to the inspection of such devices and the movement of vehicles with defective rear end marking devices. The requirements are intended to reduce the likelihood of rear-end collisions due to the inconspicuity of the rear-end of a leading train.

Justification

VTA seeks a waiver from all of the requirements of part 221 because the VTA light rail vehicles are designed in conformance with the requirements of § 5 of CPUC General Order 143–A. The VTA light rail cars have two red taillights that are designed to be visible for a distance of 500 feet from the rear-end of the train and that are located 45 inches above the top of rail. Because the rear lights on the VTA vehicles will make them conspicuous to any trailing train, the VTA vehicle lighting will provide an equivalent level of safety to that provided by the FRA regulation.

Part 223 Section 223.9(c)—Glazing Requirements; Section 223.17—Identification

Section 223.9(c) requires that passenger cars be equipped with FRA-certified glazing in all windows. These requirements are intended to reduce the likelihood of injury to passengers and/or employees from breakage and shattering of windows (including windshields). Section 223.17 requires each passenger car that is fully equipped with FRA compliant glazing material to have a notice of compliance stenciled on an interior wall of the car. This serves the purpose of providing notice about the glazing material in the car.

Justification

VTA requests a waiver of these requirements because the VTA light rail vehicle will conform instead to the windshield and window requirements of § 6.04 of CPUC General Order 143–A. Under § 6.04, windshields and other windows must be made of laminated safety glass or shatter-proof or tempered glazing material. Glass meeting this standard is break-resistant in normal usage, but if broken, will "crumble" into pebble-like pieces, posing no significant hazard to passengers, employees, or rescue personnel. The use of such safety glass windows is standard throughout the rail transit industry for (among other

applications) in-street light rail operations, where it has proved both durable and safe. In addition, the interior side of the window surfaces will have a carbonate coating. While the primary purpose of the coating is to render the windows resistant to graffiti, the coating also serves to provide additional protection against spalling in the event the window is broken. This extra protection adds to the safety of the windows. Finally, the risk associated with vandalism (such as by rocks thrown against the windows) is addressed from an operational standpoint in the security portions of the Safety Plan. There is no reason to believe that the VTA light rail vehicle windows will pose any safety hazard in conventional railroad corridor operations. This request is consistent with the FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28421).

Part 225 Railroad Accidents/ Incidents: Reports Classification, and Investigations

Part 225 prescribes reporting requirements for accidents and injuries meeting specified materiality thresholds. Part 225 also provides for recordkeeping and record retention policies. These requirements support FRA's enforcement efforts and provide information to detect trends on an industry-wide basis.

Justification

VTA requests a waiver of the reporting and investigation requirements for injuries because VTA will be following the injury reporting requirements prescribed in Sections 5 and 6 of CPUC General Order 164–A and § 4.10 of the VTA Safety Plan. In addition, VTA is responsible for compliance with applicable Occupational Safety and Health Administration workplace injury reporting requirements. Compliance with FRA regulations just for injuries on the Drill Track segment would require the creation of a separate administrative structure for injury reporting, which would place an unnecessary administrative burden on VTA without enhancing safety (see Policy Statement at 28422).

Part 228 Records and Reporting

Subsections 228.17(a)(2)–(10) of part 228 contain train movement recordkeeping requirements to be maintained by persons performing dispatcher functions. These requirements are intended to aid FRA in enforcing the statutory hours of service requirements by providing a detailed record of train movements and crew locations.

Justification

VTA requests a waiver of these requirements because they will create an unnecessary paperwork burden for VTA, while providing little of the benefit they do in the freight railroad operating environment. The requirements of §§ 228.17(a)(2)–(10) are designed for freight railroad operations, where there are often: multiple dispatching districts; varying train consists, routes and locomotive power units; changing train schedules; and unscheduled trains. On freight railroads, dispatcher and train crew working hours may vary and reporting stations may change. Usually work is not confined to a short segment of rail line and overnight time away from home is common. In this environment, the FRA-required dispatcher records are useful for keeping track of trains and train crews, which is essential to assuring compliance with the hours of service requirements without disruption to service.

VTA service, however, is vastly different. VTA light rail dispatchers operate out of a single Operations Control Center, directing the movement of regularly scheduled trains, with regularly scheduled station stops over a fixed route on a day-in, day-out basis. Dispatchers and vehicle operators work fixed schedules, with many of the same dispatchers and vehicle operators working the same hours each week. Moreover, dispatcher and vehicle operator responsibilities do not require them to be away from home during non-duty hours. Thus, in the VTA operating environment, the standard records maintained by VTA on train and train crew movements and operator attendance will provide sufficient information to determine service hours worked.

Part 229 Railroad Locomotive Safety Standards

Part 229 sets forth standards related to operation and maintenance of railroad locomotives. These requirements are intended to ensure that locomotives and locomotive components are and remain in good working order to permit the proper function of the locomotive and to reduce the likelihood of accidents due to failures of locomotive system components.

Justification

VTA requests a waiver of the requirements of part 229 because the VTA light rail vehicles are operated and maintained in accordance with the requirements of Sections 1.08 and 14 of CPUC General Order 143–A, § 5 of the VTA Safety Plan and § 3 of the Rulebook and SOPs 5.1–5.6, 6.1–6.11, 8.7, 8.10 and 8.12. Under these requirements, all light rail cars and component systems must be maintained in proper working condition, inspected and tested on a periodic basis, and operated in a safe manner.

VTA understands that FRA is particularly concerned that locomotives have alerting lights in a triangular pattern at the front end of each vehicle (as required by § 229.125). While the VTA light rail vehicles do not have lights that create a triangular pattern, VTA believes that the front-end lighting on the cars will provide a sufficiently distinctive profile that motor vehicle traffic and pedestrians will be alerted to the presence of an oncoming VTA train. The VTA cars, in accordance with § 5.01 of CPUC General Order 143–A, will have two headlights capable of revealing a person or motor vehicle in clear weather at a distance of 350 feet. They also will have yellow marker lights in the top corners of the cars. These high-mounted yellow lights are distinctive to the light rail vehicle and render the VTA trains clearly identifiable to motorists and pedestrians.

The features of the VTA light rail vehicles, combined with the CPUC, Safety Plan, Rulebook, and SOP inspection, testing, maintenance and operating requirements, will ensure that the VTA vehicles are maintained and operated in safe working order. This request is consistent with the FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28421).

§ 231.14 Passenger Cars without End Platforms

Section 231.14 specifies the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances (*e.g.*, hand brakes, ladders, handholds, steps), directly implementing a number of statutory requirements found in 49 U.S.C. §§ 20301–05.

The statute contains specific standards for automatic couplers, sill steps, hand brakes, and secure ladders and running boards. Where ladders are required, the statute mandates compliant handholds or grab irons for the roof of the vehicle at the top of each ladder. Compliant grab irons or handholds also are required for the ends and sides of the vehicles, in addition to standard height drawers. In addition, the statute requires trains to be

equipped with a sufficient number of vehicles with power or train brakes so that the engineer may control the train's speed without the use of a common hand brake. At least 50 percent of the vehicles in the train must be equipped with power or train brakes, and the engineer must use the power or train brakes on those vehicles and all other vehicles equipped with such brakes that are associated with the equipped vehicles in the train.

Aside from these statutory-based requirements, the regulations provide additional and parallel specifications for hand brakes, sill steps, side handholds, end handholds, end handrails, side-door steps, and uncoupling levers. More specifically, each passenger vehicle must be equipped with an efficient hand brake that operates in conjunction with the power brake on the train. The hand brake must be located so that it can be safely operated while the passenger vehicle is in motion. Passenger cars must have four sill steps and side-door steps, and prescribed tread length, dimensions, material, location, and attachment devices for sill steps and side-door steps. In addition, there are requirements for the number, composite material, dimensions, location, and other characteristics for side and end handholds and end handrails. Finally, this section requires the presence of uncoupling attachments that can be operated by a person standing on the ground.

These very detailed regulations are intended to ensure that sufficient safety appliances are available and that they will function safely and securely as intended.

Justification

As noted above, some of the requirements in § 231.14 are required by statute and, therefore, are not subject to waiver under FRA's regulatory waiver provisions. FRA does, however, have the statutory authority to provide exemptions from these statutory requirements. 49 U.S.C. § 20306. Consequently, VTA requests exemption from and/or waiver of these requirements, as appropriate, because the VTA light rail vehicles will be equipped with their own array of safety devices resulting in equivalent safety. These are discussed below in greater detail.

The VTA light rail vehicles have only three steps for entry. The risk of falling while climbing aboard the train is minimal, and therefore most of the listed appliances are not necessary for safety. The VTA light rail vehicles do, however, have equivalent versions of some of the safety appliances that are tailored to VTA operations (§ 3 of CPUC General Order 143–A). For example, to ensure passenger and crew safety during the embarking/disembarking process and during operation of the vehicles, the VTA light rail vehicles are equipped with grab handles and bars. In addition, each vehicle is equipped with an appliance running the length of the front of the vehicle to provide protection against foreign objects being caught under the car body while the vehicle is in motion. Also, the VTA light rail vehicles are equipped with automatic couplers, rendering uncoupling levers unnecessary.

The VTA light rail vehicles will have brakes as required by § 4 of CPUC General Order 143–A and will be inspected, tested, and maintained as required by §§ 4 and 14 of the General Order, § 5 of the VTA Safety Plan and SOPs 5.1 and 5.3. Therefore, the VTA light rail vehicle brake system will be equivalent to a standard air brake system, and thus provide an equivalent level of safety.

VTA is aware that it may obtain exemption from the statutory safety appliance requirements mentioned above only if application of such requirements would "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations." 49 U.S.C. § 20306. The exemption for technological improvements was originally enacted to further the implementation of a specific type of freight car, but the legislative history shows that Congress intended the exemption to be used elsewhere so that "other types of railroad equipment might similarly benefit." S. Rep. 96–614, at 8, (1980), reprinted in 1980 U.S.C.C.A.N. 1156, 1164.

FRA has recognized the potential public benefits of temporally-separated transit use on segments of the general railroad system. Light rail transit systems "promote more livable communities by serving those who live and work in urban areas without adding congestion to the Nation's overcrowded highways" (see Policy Statement at 28238). They "take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right of way, would be prohibitively expensive" (Id. at 28238). There have been many technological advances in types of equipment used for passenger rail operations, such as the use of light rail transit vehicles that will be used for the VTA light rail system. Light rail transit equipment is energy efficient for passenger rail operations because it is lighter than conventional passenger equipment. Most light rail vehicles are electric, which reduces air pollution. Light rail vehicles are able to quickly accelerate or decelerate, which makes them more suitable than other equipment types in systems with closely-configured stations. Denying VTA's request for an exemption from certain safety appliance requirements would preclude the implementation of light rail transit for shared use/temporal separation operations. Moreover, compliance with the statutory requirements is not necessary for safe operations.

With regard to the regulatory requirements of § 231.14, the VTA light rail vehicles will be equipped with safety appliances that are more appropriate for light rail transit vehicles, thus achieving an equivalent or superior level of safety in the VTA operating environment. This request is consistent with the FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28421).

Section 234.105(c)(3) Activation Failure

Section 234.105 sets forth procedures to be followed in the event of a failure of the activating mechanism of a highway-rail grade crossing warning system. Section 234.105(c) provides for alternative means of actively warning highway users of approaching trains during periods of warning system activation failure. These requirements are intended to prevent collisions between motor vehicles and trains at grade crossings due to failure of the grade crossing warning system by providing for alternate means of controlling traffic at such crossings.

Justification

VTA requests a waiver from this requirement because this procedure is not compatible with VTA operations. In cases of grade crossing warning system activation failures, VTA will deploy flaggers or request the deployment of uniformed law enforcement officers to provide traffic control services, in accordance with the requirements of this section. However, there may be times at which no flagger or uniformed law enforcement officer is available. In such instances, VTA will not be able to follow the procedure in § 234.105(c)(3) to move the train through the crossing because the VTA light rail vehicles will be operated by one person crews, and that crew member cannot leave the train to flag the crossing. Instead, VTA proposes to bring the train to a full stop at the crossing, sound an appropriate audible warning device on the vehicle, then proceed through the crossing at

restricted speed as conditions permit (in any case less than 15 mph). The proposed procedure will provide a level of safety equivalent to that provided by the FRA rule, while causing less disruption to VTA light rail service.

Part 236 Track Circuit Requirements

Section 236.51 requires broken rail protection such that track circuits generally must be de-energized or in their most restrictive state when a rail is broken. This requirement is intended to reduce the likelihood of an accident caused by broken rails by restricting train movement over such rails.

Justification

VTA requests a waiver of this requirement because audio frequency overlay ("AFO") track circuits are in use over the Drill Track. AFO track circuits were chosen because they eliminate the need for insulated joints and impedance bonds at the insulated joints, making them more cost effective than conventional track circuits. In addition, it was considered preferable to avoid insulated joints because they provide weak spots in the track. Although AFO circuits are not as sensitive to broken rail conditions as conventional power frequency track circuits, VTA believes that safety will not be compromised by their use.

AFO track circuits do provide some broken rail protection; some broken rail situations (where the rail is physically separated) are detected by AFO track circuits, which then show an occupancy to prohibit the entry of trains into the affected block.

While AFO circuits may not detect cracks, VTA maintenance practices make it unlikely that a crack not detected by the AFO track circuits would result in an accident. VTA conducts formal visual inspection of its tracks on a weekly basis. In addition, because of the local and urbanized nature of the system, it is unlikely that erosion, earth movement or some other occurrence which would affect the track would go unnoticed and unremedied between weekly inspections.

Part 238 Passenger Equipment Standards

These standards deal with structural requirements for passenger rail vehicles and vehicle equipment, along with inspection and maintenance standards for such equipment. These standards are intended to enhance the safety of passenger rail operations in the case of accidents by ensuring that passenger rail vehicles have certain crashworthiness and emergency exit features.

Justification

VTA requests a waiver from the requirements of part 238 because the VTA light rail vehicles have been manufactured to comply with the requirements of CPUC General Order 143–A. VTA believes that these standards will provide a sufficient level of safety in the VTA operating environment.

Sections 3, 6 and 10 of the General Order contain standards for light rail vehicle equipment, brakes, lighting, emergency exits, windows, structural components (i.e., anti-climbers, collision posts and end sills), and traction power systems. These sections cover both equipment design and performance requirements. More specifically, the Order sets forth requirements that light rail vehicles be equipped with certain pieces of safety equipment (such as deadman controls, audible warning devices, emergency brakes, etc.), along with performance specifications for brake systems and construction requirements for vehicles (CPUC General Order 143–A). These requirements are intended to lower the risk of injury to occupants, both through structural capacity of the vehicles to protect the occupant compartment and through safety precautions against secondary hazards resulting from initial collisions (i.e., fire, lack of egress, etc.). Compliance with the more stringent FRA requirements is not necessary because VTA's light rail operations will be completely separated from UPRR's infrequent freight operations, eliminating the risk that VTA light rail vehicles will enter into collisions with heavier freight trains.

The VTA vehicles will be operated, inspected, tested and maintained, as required by § 5 of the VTA Safety Plan, § 3 of the Rulebook and SOPs 5.1–5.6, 6.1–6.11, 8.7, 8.10 and 8.12. Under these requirements all light rail vehicles and component systems must be maintained in proper working order, inspected and tested on a periodic basis, and must be operated in a safe manner. These provisions also include instructions for marking and moving defective equipment. Compliance with these Rules and SOPs is monitored, as required by § 7 of the Safety Plan and §§ 3 and 4 of General Order 164–A.

The CPUC and VTA requirements will provide for a level of safety at least equivalent to FRA requirements. This request is consistent with the FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28422).

Part 239 Emergency Preparedness

Part 239 contains standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. It is intended that by providing sufficient emergency egress capability and information to passengers, and by having emergency preparedness plans calling for coordination with local emergency response officials, the risk of death or injury to passengers, employees, and others in the case of accidents or other incidents, will be lessened.

Justification

VTA requests a waiver from the part 239 requirements because VTA will be following CPUC and VTA emergency preparedness requirements. VTA believes that compliance with these emergency preparedness requirements will provide a level of safety equivalent to the FRA standards.

Sections 5.05 and 6.05 of CPUC General Order 143–A contain emergency lighting and emergency exit requirements, respectively. In addition, the VTA vehicles are each equipped with four (4) emergency window exits and fire extinguishers.

Section 3.1 of CPUC General Order 164–A requires VTA to adopt an emergency response plan and procedures which must provide for emergency situation training and coordination with external emergency response agencies. Sections 4.3, 4.12, 5.2, 5.5, 5.7 and 5.8 of the Safety Plan set forth the responsibility of the various VTA divisions and personnel for emergency planning and response activities. Section 2.6 of the Security Portion of the Safety Plan also addresses emergency response issues. SOPs 9.1–9.20 prescribe detailed operating procedures in the event of emergency, including coordination with police and fire departments, and passenger evacuation procedures. There are specific SOPs for a variety of emergency situations from derailments and collisions to natural disasters to civil disorders or terrorist activities.

These emergency preparedness standards will provide a level of safety equivalent to the FRA requirements. Compliance with FRA regulations just for emergencies on the Drill Track would require the creation of a separate administrative structure for emergency planning and response, which would place an unnecessary administrative burden on VTA without enhancing safety. This request is consistent with FRA's position on the appropriate

treatment of this part, as stated in the Policy Statement (see Policy Statement at 28422).

Part 240 Qualification and Certification of Locomotive Engineers

Part 240 contains regulations relating to the qualification and certification of locomotive engineers. The locomotive engineer shoulders significant responsibility for the safety of him/herself and others in the railroad operating environment. Through the regulation's training, eligibility, testing, and monitoring standards, FRA seeks to ensure that only sufficiently qualified individuals are entrusted with those unique responsibilities.

Justification

VTA requests a waiver from these requirements because VTA will be following CPUC and VTA operator training and qualification standards. VTA believes that compliance with the CPUC/VTA operator qualification and training requirements will provide at least an equivalent level of safety. SOPs 1.5 and 1.9 set forth specific training and certification requirements for VTA light rail operators, in accordance with the requirements of Sections 12.02, 13 and 14.03 of CPUC General Order 143–A and § 5.2 of the Safety Plan. Moreover, compliance with FRA regulations for operators whose routes take them over the Drill Track would require the creation of a separate administrative structure for locomotive engineer training and qualification, which would place an unnecessary administrative burden on VTA without enhancing safety. This request is consistent with FRA's position on the appropriate treatment of this part, as stated in the Policy Statement (see Policy Statement at 28422).

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with either the request for a waiver of certain regulatory provisions or the request for an exemption of certain statutory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA 1999–6254) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, D.C. on October 26, 1999.

Michael Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 99–28467 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–1999–6414]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Jean McKeever, Maritime Administration, Office of Ship Financing, Room 8122, 400 7th St., S.W., Washington, D.C. 20590. Telephone 202–366–5744, FAX 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Capital Construction Fund and Exhibits.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0027.

Form Numbers: None.

Expiration Date of Approval: June 30, 2000.

Summary of Collection of Information: This information collection consists of application for a Capital Construction Fund (CCF) agreement under section 607 of the Merchant Marine Act, 1936 as amended, and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Need and Use of the Information: The collected information is necessary for MARAD to determine an applicant's eligibility to enter into a CCF Agreement.

Description of Respondents: U.S. citizens who own or lease one or more eligible vessels and who have a program to provide for the acquisition, construction or reconstruction of a qualified vessel.

Annual Responses: 140.

Annual Burden: 2130 hours total.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. Dot Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: October 27, 1999.

Michael J. McMorrow,

Acting Secretary.

[FR Doc. 99–28539 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143 (Notice No. 99–11)]

Safety Advisory; High Pressure Aluminum Seamless and Aluminum Composite Hoop-Wrapped Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice; correction.

SUMMARY: On October 18, 1999, RSPA published a safety advisory notice in the **Federal Register** to alert owners, users, and other persons responsible for the maintenance of certain cylinders made of aluminum alloy 6351–T6 of potential safety problems and to advise them to follow the precautionary measures outlined in that notice. This document corrects the telephone numbers shown in that notice for Luxfer (USA).

FOR FURTHER INFORMATION CONTACT: Mark Toughiry or Stanley Staniszewski, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington DC 20590–001; telephone number (202)366–4545; or by E-mail to "rules@rspa.dot.gov" and refer to the Docket and Notice numbers set forth above.

Correction

In the **Federal Register** issue of October 18, 1999, in FR Doc. 99–27113, on page 56244, in the first column, last paragraph, correct the third sentence to read:

"For guidance on inspecting Luxfer gas cylinders, contact Luxfer (USA), 3016 Kansas Avenue, Riverside, CA 92507; web site at *www.luxfercylinders.com;* telephone (909) 684–5110; fax (909) 341–9266."

Issued in Washington, D.C. on October 25, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–28516 Filed 10–29–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–402 (Sub–No. 7X)]

Fox Valley & Western Ltd.—Abandonment Exemption—in Washington and Fond du Lac Counties, WI

On October 12, 1999, Fox Valley & Western Ltd. (FVW) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 24.64-mile line of railroad, known as the West Bend-Eden Line, extending from milepost 114.42 south of West Bend to milepost 139.06 in Eden, in Washington and Fond du Lac Counties, WI. The line traverses U.S. Postal Service ZIP Codes 53095, 53010, 53040 and 53099, and includes the stations of West Bend (milepost 117.6), BR Siding (milepost 122.0), Kewaskum (milepost 125.1), and Campbellsport (milepost 131.1).

The line does not contain federally granted rights-of-way. Any documentation in FVW's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 28, 2000.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 22, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–402 (Sub-No. 7X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Michael J. Barron, Jr., P.O. Box 5062, Rosemont, IL 60017–5062. Replies to the FVW petition are due on or before November 22, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–28123 Filed 10–29–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–31 (Sub–No. 36X]

Grand Trunk Western Railroad Incorporated—Abandonment Exemption—Rail Line in Detroit, MI

On October 12, 1999, Grand Trunk Western Railroad Incorporated (GTW) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–05 [1] to abandon a 1.31-mile segment of its line of railroad, known as the Dequindre Line, extending between milepost 1.77 and milepost 0.46, in Detroit, Wayne County, MI. The line traverses U.S. Postal Service Zip Code 48226 and has no stations.

The line does not contain federally granted rights-of-way. Any

[1] GTW seeks exemptions from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and from the public use provisions of 49 U.S.C. 10905. These exemption requests will be addressed in the final decision.

documentation in GTW's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 28, 2000.

Unless an exemption is granted, as sought, from the OFA provisions of 49 U.S.C. 10904, any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Unless an exemption is granted, as sought, from the public use provisions of 49 U.S.C. 10905, any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 22, 1999.[2] Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–31 (Sub-No. 36X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Robert P. vom Eigen, Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, DC 20006.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

[2] Upon obtaining abandonment authority, GTW has contractually agreed to transfer the property to Jefferson Holdings, LLC, for development as a transportation corridor; specifically, a four-lane roadway and possible mass transit in the future. Therefore, it is unlikely that GTW will be willing to negotiate with any party for transfer of the line for trail use.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–28249 Filed 10–29–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on Outside Borrowings.

DATES: Submit written comments on or before January 3, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0061. Hand deliver comments to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). E-mail to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Office of Supervision and Examination, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Outside Borrowings.

OMB Number: 1550–0061.

Abstract: Information is collected from thrift institutions that do not meet capital requirements. These institutions must give ten days prior notification before making long-term borrowings. Information submitted by the institutions is used to monitor their safety and soundness.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Extension of a Currently Approved Collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1.

Estimated Total Annual Burden Hours: 4.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency=s estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 26, 1999.

John E. Werner,

Director, Information Management and Services.

[FR Doc. 99–28498 Filed 10–29–99; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 64, No. 210
Monday, November 1, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 201 and 213

[DFARS Case 99–D002]

Defense Federal Acquisition Regulation Supplement; Overseas Use of the Purchase Card

Correction

In rule document 99–27278 beginning on page 56704, in the issue of Thursday, October 21, 1999, the heading is corrected to read as set forth above.

[FR Doc. C9–27278 Filed 10–29–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–5–000]

Midwestern Gas Transmission Company; Notice of Request Under Blanket Authorization

Correction

In notice document 99–27852 appearing on page 57635 in the issue of Tuesday, October 26, 1999, the docket number is added to read as set forth above.

[FR Doc. C9–27852 Filed 10–29–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday
November 1, 1999

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Bull Trout in the Coterminous United States; Final Rule

Notice of Intent To Prepare a Proposed Special Rule Pursuant to Section 4(d) of the Endangered Species Act for the Bull Trout; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF01

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Bull Trout in the Coterminous United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine threatened status for all populations of bull trout (*Salvelinus confluentus*) within the coterminous United States, with a special rule, pursuant to the Endangered Species Act of 1973, as amended (Act). This determination is based on our finding that the Coastal-Puget Sound and St. Mary-Belly River population segments are threatened, coupled with our earlier findings of threatened status for the Klamath River, Columbia River, and Jarbidge River population segments. These population segments are disjunct and geographically isolated from one another with no genetic interchange between them due to natural and man-made barriers. These population segments collectively encompass the entire range of the species in the coterminous United States. Therefore, for the purposes of consultation and recovery, we recognize these five distinct population segments as interim recovery units. With this final rule, the bull trout will now be listed as threatened throughout its entire range in the coterminous United States.

The Coastal-Puget Sound bull trout population segment encompasses all Pacific coast drainages within Washington, including Puget Sound. The St. Mary-Belly River bull trout population segment occurs in northwest Montana. Bull trout are threatened by the combined effects of habitat degradation, fragmentation and alterations associated with dewatering, road construction and maintenance, mining, and grazing; the blockage of migratory corridors by dams or other diversion structures; poor water quality; incidental angler harvest; entrainment (process by which aquatic organisms are pulled through a diversion or other device) into diversion channels; and introduced non-native species. This final determination was based on the best available scientific and commercial information including current data and new information received during the comment period.

EFFECTIVE DATE: December 1, 1999.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the above address (telephone 208/378–5243; facsimile 208/378–5262) to make an appointment to inspect the complete file for this rule or for information pertaining to the Columbia River population segment; Gerry Jackson, Manager, Western Washington Office (telephone 360/753–9440; facsimile 360/753–9008) for information pertaining to the Coastal-Puget Sound population segment; Kemper McMaster, Field Supervisor, Montana Field Office (telephone 406/449–5225; facsimile 406/449–5339) for information pertaining to the St. Mary-Belly River population segment; Steven Lewis, Field Supervisor, Klamath Falls Fish and Wildlife Office (telephone 541/885–8481; facsimile 541/885–7837) for information pertaining to the Klamath River population segment; Robert D. Williams, Field Supervisor, Nevada State Office (telephone 775/861–6300; facsimile 775/861–6301) for information pertaining to the Jarbidge River population segment.

SUPPLEMENTARY INFORMATION:

Background

Bull trout (*Salvelinus confluentus*), members of the family Salmonidae, are char native to the Pacific northwest and western Canada. They historically occurred in major river drainages in the Pacific northwest from about 41° N to 60° N latitude, from the southern limits in the McCloud River in northern California and the Jarbidge River in Nevada, north to the headwaters of the Yukon River in Northwest Territories, Canada (Cavender 1978; Bond 1992). To the west, bull trout range includes Puget Sound, various coastal rivers of Washington, British Columbia, Canada, and southeast Alaska (Bond 1992; Leary and Allendorf 1997). Bull trout are relatively dispersed throughout tributaries of the Columbia River Basin, including its headwaters in Montana and Canada. Bull trout also occur in the Klamath River Basin of south-central Oregon. East of the Continental Divide, bull trout are found in the headwaters of the Saskatchewan River in Alberta and the MacKenzie River system in Alberta and British Columbia (Cavender 1978; Brewin and Brewin 1997).

Bull trout were first described as *Salmo spectabilis* by Girard in 1856 from a specimen collected on the lower Columbia River, and subsequently described under a number of names such as *Salmo confluentus* and *Salvelinus malma* (Cavender 1978). Bull trout and Dolly Varden (*Salvelinus malma*) were previously considered a single species (Cavender 1978; Bond 1992). Cavender (1978) presented morphometric (measurement), meristic (counts), osteological (bone structure), and distributional evidence to document specific distinctions between Dolly Varden and bull trout. Subsequently, bull trout and Dolly Varden were formally recognized as separate species by the American Fisheries Society in 1980 (Robins *et al.* 1980). Although bull trout and Dolly Varden co-occur in several northwestern Washington River drainages, there is little evidence of introgression and the two species appear to be maintaining distinct genomes (Leary and Allendorf 1997).

Bull trout exhibit both resident and migratory life-history strategies through much of the current range (Rieman and McIntyre 1993). Resident bull trout complete their life cycles in the tributary streams in which they spawn and rear. Migratory bull trout spawn in tributary streams, and juvenile fish rear from 1 to 4 years before migrating to either a lake (adfluvial), river (fluvial), or in certain coastal areas, saltwater (anadromous), to mature (Fraley and Shepard 1989; Goetz 1989). Anadromy is the least studied life-history type in bull trout, and some biologists believe the existence of true anadromy in bull trout is still uncertain (McPhail and Baxter 1996). However, historical accounts, collection records, and recent evidence suggests an anadromous life-history form for bull trout (Suckley and Cooper 1860; Cavender 1978; McPhail and Baxter 1996; Washington Department of Fish and Wildlife (WDFW) *et al.* 1997—formerly the Washington Department of Wildlife (WDW)). Resident and migratory forms may be found together, and bull trout may produce offspring exhibiting either resident or migratory behavior (Rieman and McIntyre 1993).

Compared to other salmonids, bull trout have more specific habitat requirements (Rieman and McIntyre 1993) that appear to influence their distribution and abundance. Critical parameters include water temperature, cover, channel form and stability, valley form, spawning and rearing substrates, and migratory corridors (Oliver 1979; Pratt 1984, 1992; Fraley and Shepard 1989; Goetz 1989; Hoelscher and Bjornn 1989; Sedell and Everest 1991; Howell and Buchanan 1992; Rieman and

McIntyre 1993, 1995; Rich 1996; Watson and Hillman 1997). Watson and Hillman (1997) concluded that watersheds must have specific physical characteristics to provide the necessary habitat requirements for bull trout spawning and rearing, and that the characteristics are not necessarily ubiquitous throughout watersheds in which bull trout occur. Because bull trout exhibit a patchy distribution, even in undisturbed habitats (Rieman and McIntyre 1993), fish would not likely occupy all available habitats simultaneously (Rieman *et al.* 1997).

Bull trout are typically associated with the colder streams in a river system, although fish can occur throughout larger river systems (Fraley and Shepard 1989; Rieman and McIntyre 1993, 1995; Buchanan and Gregory 1997; Rieman *et al.* 1997). For example, water temperature above 15° C (59° F) is believed to negatively influence bull trout distribution, which partially explains the generally patchy distribution within a watershed (Fraley and Shepard 1989; Rieman and McIntyre 1995). Spawning areas are often associated with cold-water springs, groundwater infiltration, and the coldest streams in a given watershed (Pratt 1992; Rieman and McIntyre 1993; Rieman *et al.* 1997).

All life history stages of bull trout are associated with complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Oliver 1979; Fraley and Shepard 1989; Goetz 1989; Hoelscher and Bjornn 1989; Sedell and Everest 1991; Pratt 1992; Thomas 1992; Rich 1996; Sexauer and James 1997; Watson and Hillman 1997). Jakober (1995) observed bull trout overwintering in deep beaver ponds or pools containing large woody debris in the Bitterroot River drainage, Montana, and suggested that suitable winter habitat may be more restrictive than summer habitat. Maintaining bull trout populations requires stream channel and flow stability (Rieman and McIntyre 1993). Juvenile and adult bull trout frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997). These areas are sensitive to activities that directly or indirectly affect stream channel stability and alter natural flow patterns. For example, altered stream flow in the fall may disrupt bull trout during the spawning period, and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989; Pratt 1992; Pratt and Huston 1993).

Preferred spawning habitat generally consists of low gradient stream reaches often found in high gradient streams that have loose, clean gravel (Fraley and Shepard 1989) and water temperatures of 5 to 9° C (41 to 48° F) in late summer to early fall (Goetz 1989). Pratt (1992) reported that increases in fine sediments reduce egg survival and emergence. High juvenile densities were observed in Swan River, Montana, and tributaries characterized by diverse cobble substrate and a low percent of fine sediments (Shepard *et al.* 1984).

The size and age of maturity for bull trout is variable depending upon life-history strategy. Growth of resident fish is generally slower than migratory fish; resident fish tend to be smaller at maturity and less fecund (productive) (Fraley and Shepard 1989; Goetz 1989). Resident adults range from 150 to 300 millimeters (mm) (6 to 12 inches (in)) total length and migratory adults commonly reach 600 mm (24 in) or more (Pratt 1985; Goetz 1989). The largest verified bull trout is a 14.6 kilogram (kg) (32 pound (lb)) specimen caught in Lake Pend Oreille, Idaho, in 1949 (Simpson and Wallace 1982).

Bull trout normally reach sexual maturity in 4 to 7 years and can live 12 or more years. Biologists report repeat and alternate year spawning, although repeat spawning frequency and post-spawning mortality are not well known (Leathe and Graham 1982; Fraley and Shepard 1989; Pratt 1992; Rieman and McIntyre 1996). Bull trout typically spawn from August to November during periods of decreasing water temperatures. However, migratory bull trout may begin spawning migrations as early as April, and move upstream as far as 250 kilometers (km) (155 miles (mi)) to spawning grounds in some areas of their range (Fraley and Shepard 1989; Swanberg 1997). In the Blackfoot River, Montana, bull trout began spawning migrations in response to increasing temperatures (Swanberg 1997). Temperatures during spawning generally range from 4 to 10° C (39 to 51° F), with redds (spawning beds) often constructed in stream reaches fed by springs or near other sources of cold groundwater (Goetz 1989; Pratt 1992; Rieman and McIntyre 1996). Depending on water temperature, egg incubation is normally 100 to 145 days (Pratt 1992), and juveniles remain in the substrate after hatching. Time from egg deposition to emergence may surpass 200 days. Fry normally emerge from early April through May depending upon water temperatures and increasing stream flows (Pratt 1992; Ratliff and Howell 1992).

Bull trout are opportunistic feeders, with food habits primarily a function of size and life-history strategy. Resident and juvenile bull trout prey on terrestrial and aquatic insects, macro-zooplankton, amphipods, mysids, crayfish, and small fish (Wyman 1975; Rieman and Lukens 1979 in Rieman and McIntyre 1993; Boag 1987; Goetz 1989; Donald and Alger 1993). Adult migratory bull trout are primarily piscivorous, known to feed on various trout and salmon species (*Onchorynchus* spp.), whitefish (*Prosopium* spp.), yellow perch (*Perca flavescens*) and sculpin (*Cottus* spp.) (Fraley and Shepard 1989; Donald and Alger 1993).

In the Coastal-Puget Sound and St. Mary-Belly River population segments, bull trout co-evolved with, and in some areas, co-occur with native cutthroat trout (*Oncorhynchus clarki* subspecies (ssp.)), migratory rainbow trout (*O. mykiss* ssp.), chinook salmon (*O. tshawytscha*), coho salmon (*O. kisutch*), sockeye salmon (*O. nerka*), mountain whitefish (*Prosopium williamsoni*), pygmy whitefish (*P. coulteri*), and various sculpin, sucker (Catastomidae) and minnow (Cyprinidae) species (Rieman and McIntyre 1993; R2 Resource Consultants, Inc. 1993). Bull trout habitat within the coterminous United States overlaps with the range of several fishes listed as threatened or endangered, and proposed or petitioned for listing under the Act, including endangered Snake River sockeye salmon (November 20, 1991; 56 FR 58619); threatened Snake River spring and fall chinook salmon (April 22, 1992; 57 FR 14653); endangered Kootenai River white sturgeon (*Acipenser transmontanus*) (September 6, 1994; 59 FR 45989); threatened and endangered steelhead (August 18, 1997; 62 FR 43937); threatened Puget Sound chinook salmon (March 9, 1998; 63 FR 11481); threatened Hood Canal summer-run chum salmon and Columbia River chum salmon (March 25, 1999; 64 FR 14507); proposed threatened status for southwestern Washington/Columbia River coastal cutthroat trout (April 5, 1999; 64 FR 16397); and westslope cutthroat trout in northern Idaho, eastern Washington, and northwest Montana (*O. c. lewisi*) for which a status review is currently underway (June 10, 1998; 63 FR 31691).

Widespread introductions of non-native fishes, including brook trout (*Salmo fontinalis*), lake trout (*S. namaycush*) (west of the Continental Divide), and brown trout (*Salmo trutta*) and hatchery rainbow trout (*Oncorhynchus mykiss*), have also occurred across the range of bull trout. These non-native fishes are often associated with local bull trout declines and extirpations (Bond 1992; Ziller

1992; Donald and Alger 1993; Leary *et al.* 1993; Montana Bull Trout Scientific Group (MBTSG) 1996a,h). East of the Continental Divide, in the St. Mary-Belly River drainage, bull trout co-evolved with lake trout and westslope cutthroat trout (Fredenberg 1996). In this portion of their range, bull trout and lake trout have apparently partitioned habitat with lake trout dominating lentic (i.e., lake) systems, relegating bull trout to riverine systems and the fluvial life-history form (Donald and Alger 1993).

Bull trout habitat in the coterminous United States is found in a mosaic of land ownership, including Federal, State, Tribal, and private lands. For the Coastal-Puget Sound population segment, over half of the bull trout habitat occurs on non-Federal lands. For the St. Mary-Belly River population segment, about two-thirds of the habitat occurs on Federal land (Glacier National Park) and about a third on Tribal lands of the Blackfeet Indian Nation.

Migratory corridors link seasonal habitats for all bull trout life-history forms. The ability to migrate is important to the persistence of local bull trout subpopulations (Rieman and McIntyre 1993; Mike Gilpin, University of California, *in litt.* 1997; Rieman and Clayton 1997; Rieman *et al.* 1997). Migrations facilitate gene flow among local subpopulations if individuals from different subpopulations interbreed when some return to non-natal streams. Migratory fish may also reestablish extirpated local subpopulations.

Metapopulation concepts of conservation biology theory may be applicable to the distribution and characteristics of bull trout (Rieman and McIntyre 1993; Kanda 1998). A metapopulation is an interacting network of local subpopulations with varying frequencies of migration and gene flow among them (Meffe and Carroll 1994). Metapopulations provide a mechanism for reducing risk because the simultaneous loss of all subpopulations is unlikely. Although local subpopulations may become extinct, they can be reestablished by individuals from other local subpopulations. However, because bull trout exhibit strong homing fidelity when spawning and their rate of straying appears to be low, natural re-establishment of extinct local subpopulations may take a very long time. Habitat alteration, primarily through construction of impoundments, dams, and water diversions, has fragmented habitats, eliminated migratory corridors, and isolated bull trout, often in the headwaters of tributaries (Rieman *et al.* 1997).

Distinct Population Segments

Using the best available scientific and commercial information, we identified five distinct population segments (DPSs) of bull trout in the coterminous United States—(1) Klamath River, (2) Columbia River, (3) Coastal-Puget Sound, (4) Jarbidge River, and (5) St. Mary-Belly River. The final listing determination for the Klamath River and Columbia River bull trout DPSs on June 10, 1998 (63 FR 31647), includes a detailed description of the rationale behind the DPS delineation for those two population segments. The Jarbidge River DPS final listing determination was made on April 8, 1999 (64 FR 17110). However, the DPS policy, published on February 7, 1996 (61 FR 4722), is intended for cases where only a segment of a species' range needs the protections of the Act, rather than the entire range of a species. Although the bull trout DPSs are disjunct and geographically isolated from one another with no genetic interchange between them due to natural and man-made barriers, collectively, they include the entire distribution of the bull trout in the coterminous United States. In accordance with the DPS policy, our authority to list DPSs is to be exercised sparingly. Thus a coterminous listing is appropriate in this case. In recognition of the scientific basis for the identification of these bull trout population segments as DPSs, and for the purposes of consultation and recovery planning, we will continue to refer to these populations as DPSs. These DPSs will serve as interim recovery units in the absence of an approved recovery plan.

Coastal-Puget Sound Population Segment

The Coastal-Puget Sound bull trout DPS encompasses all Pacific Coast drainages within the coterminous United States north of the Columbia River in Washington, including those flowing into Puget Sound. This population segment is discrete because it is geographically segregated from other subpopulations by the Pacific Ocean and the crest of the Cascade Mountain Range. The population segment is significant to the species as a whole because it is thought to contain the only anadromous forms of bull trout in the coterminous United States, thus, occurring in a unique ecological setting. In addition, the loss of this population segment would significantly reduce the overall range of the taxon.

St. Mary-Belly River Population Segment

The St. Mary-Belly River DPS is located in northwest Montana east of the Continental Divide. Both the St. Mary and Belly rivers are tributaries of the Saskatchewan River Basin in Alberta, Canada. The population segment is discrete because it is segregated from other bull trout by the Continental Divide and is the only bull trout population found east of the Continental Divide in the coterminous United States. The population segment is significant because its loss would result in a significant reduction in the range of the taxon within the coterminous United States. Bull trout in this population segment migrate across the international border with Canada (Clayton 1998).

Status and Distribution

To facilitate evaluation of current bull trout distribution and abundance for the Coastal-Puget Sound and St. Mary-Belly River population segments, we analyzed data on a subpopulation basis within each population segment because fragmentation and barriers have isolated bull trout. A subpopulation is considered a reproductively isolated bull trout group that spawns within a particular area(s) of a river system. In areas where two groups of bull trout are separated by a barrier (*e.g.*, an impassable dam or waterfall, or reaches of unsuitable habitat) that may allow only downstream access (*i.e.*, one-way passage), both groups were considered subpopulations. In addition, subpopulations were considered at risk of extirpation from natural events if they were: (1) Unlikely to be reestablished by individuals from another subpopulation (*i.e.*, functionally or geographically isolated from other subpopulations); (2) limited to a single spawning area (*i.e.*, spatially restricted); and (3) characterized by low individual or spawner numbers; or (4) consisted primarily of a single life-history form. For example, a subpopulation of resident fish isolated upstream of an impassable waterfall would be considered at risk of extirpation from natural events if it had low numbers of fish that spawn in a relatively restricted area. In such cases, a natural event such as a fire or flood could eliminate the subpopulation, and, subsequently, reestablishment of the subpopulation from fish downstream would be prevented by the impassable waterfall. However, a subpopulation residing downstream of the waterfall would not be considered at risk of extirpation because of potential reestablishment by

fish from upstream. Because resident bull trout may exhibit limited downstream movement (Nelson 1996), our estimate of subpopulations at risk of natural extirpation may be underestimated. The status of subpopulations was based on modified criteria of Rieman *et al.* (1997), including the abundance, trends in abundance, and the presence of life-history forms of bull trout.

We considered a bull trout subpopulation "strong" if 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears stable or increasing, and life-history forms historically present were likely to persist. A subpopulation was considered "depressed" if less than 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears to be declining, or a life-history form historically present has been lost (Rieman *et al.*1997). If there was insufficient abundance, trend, and life-history information to classify the status of a subpopulation as either "strong" or "depressed," the status was considered "unknown." It should be noted that the assignment of "unknown" status implies only a deficiency of available data to assign a subpopulation as "strong" or "depressed," not a lack of information regarding the threats. Section 4 of the Act requires us to make a determination solely on the best scientific and commercial data available.

Coastal-Puget Sound Population Segment

The Coastal-Puget Sound bull trout population segment encompasses all Pacific coast drainages within Washington, including Puget Sound. No bull trout exist in coastal drainages south of the Columbia River. Within this area, bull trout often occur with (*i.e.*, are sympatric) Dolly Varden. Because the two species are virtually impossible to visually differentiate, the WDFW currently manages bull trout and Dolly Varden together as "native char." Previously, we delineated a total of 35 subpopulations of "native char" (bull trout, Dolly Varden, or both species) within the Coastal-Puget Sound population segment published on June 10, 1998 (63 FR 31693). Upon further review, we revised the total number of subpopulations to 34. In order to be fully consistent with the defined subpopulation criteria, we concluded that the Puyallup River Basin only has two subpopulations as opposed to three, which are the upper Puyallup River and the lower Puyallup (includes Carbon River and White River).

Bull trout and Dolly Varden can be differentiated by both genetic and morphological-meristic (measurements and counts) analyses, of which biologists have conducted one or both analyses on 15 of the 34 subpopulations. To date, we have documented bull trout in 12 of 15 subpopulations investigated (five with only bull trout, three with only Dolly Varden, and seven with both species), and it is likely that bull trout occur in the majority of the remaining 19 subpopulations (Service 1998a). Although we only documented three of the tested "native char" subpopulations as containing Dolly Varden at this time, we are not yet confident in excluding these subpopulations from the listing. We believe it would be premature to conclude that bull trout do not exist in these subpopulations given the limited sample sizes used in the analyses, the location of the subpopulations, and the evidence that bull trout and Dolly Varden can frequently co-exist together. In order to identify trends that may be specific to certain geographic areas, the 34 "native char" subpopulations were grouped into five analysis areas—Coastal, Strait of Juan de Fuca, Hood Canal, Puget Sound, and Transboundary.

Coastal Analysis Area

Ten "native char" subpopulations occur in five river basins in the Coastal analysis area (number of subpopulations)—Chehalis River-Grays Harbor (1), Coastal Plains-Quinault River (5), Queets River (1), Hoh River-Goodman Creek (2), and Quillayute River (1). Recent efforts to determine species composition in three subpopulations documented bull trout in at least two, the upper Quinault River and Queets River (Leary and Allendorf 1997; WDFW 1997a). Biologists identified only Dolly Varden in the upper Sol Duc River to date (Cavender 1978, 1984; WDFW 1997a).

Subpopulations of "native char" in the southwestern portion of the coastal area appear to be in low abundance based on anecdotal information (Mongillo 1993). Because this is the southern extent of coastal bull trout and Dolly Varden, abundance may be naturally low in systems like the Chehalis, Moclips, and Copalis rivers (WDFW 1997a). In recent years, there have been even fewer reports of incidental catches of "native char" in the Chehalis River Basin. In 1997, a single juvenile was captured in a downstream migrant trap on the mainstem of the Chehalis River (WDFW 1998a). Although little historical and current information is known concerning bull trout in these river basins, habitat degradation in the past has adversely affected other salmonids (Phinney and Bucknell 1975; Hiss and Knudsen 1993; WDFW 1997a). Habitat degradation in these basins is assumed to have similarly affected bull trout. Although "native char" are believed to be relatively more abundant in the Quinault River, extensive portions of the Basin have been degraded by past forest management (Phinney and Bucknell 1975; WDFW 1997a).

Most "native char" subpopulations in the northwestern coastal area occur partially within Olympic National Park, which contains relatively undisturbed habitats. However, outside Olympic National Park, "native char" habitat has been severely degraded by past forest practices in the Queets River and Hoh River basins (Phinney and Bucknell 1975; WDFW 1997a). Non-native brook trout have been stocked in many of the high lakes and streams in the Olympic National Park. Brook trout are present in the upper Sol Duc subpopulation and threaten this subpopulation from competition and hybridization (Service 1998a). Data collected while seining for outmigrating salmon smolts on the Queets River indicate a decline in "native char" catch rate from 3.3 fish/day in 1977 to 1 fish/day by 1984 (WDFW 1997a). From 1985 to the time seining was discontinued in 1991, catch rate remained relatively stable at approximately 1.5 fish/day. The WDFW believes that the Hoh River may have the largest subpopulation of "native char" on the Washington coast, although their numbers have greatly declined since 1982 (WDFW *in litt.* 1992; WDFW 1997a). Reasons for the decline are unknown, but overfishing is believed to be a contributing factor (WDFW 1997a; WDFW, *in litt.* 1997). Forty-one and 31 adult "native char" were observed during snorkel surveys of a 17.6-km (11-mi) section of the South Fork Hoh River in 1994 and 1995, respectively (WDFW 1997a). We consider the Hoh River subpopulation "depressed." The status of the remaining nine "native char" subpopulations in the coastal analysis area is "unknown" because insufficient abundance, trend, and life-history information is available (Service 1998a). Although the status of these subpopulations is unknown, we believe that anecdotal information, such as described for the Chehalis River-Grays Harbor and Queets River subpopulations, indicate declines in abundance in other subpopulations within the coastal analysis area.

Strait of Juan de Fuca Analysis Area

Five "native char" subpopulations occur in three river basins in the Strait of Juan de Fuca analysis area (number of subpopulations)—Elwha River (2), Angeles Basin (1), and Dungeness River (2). Recent efforts to determine species composition in three subpopulations have documented bull trout in at least two, the upper Elwha River and lower Dungeness River-Gray Wolf River (Leary and Allendorf 1997; WDFW 1997a). Only Dolly Varden have been identified in the upper Dungeness River subpopulation to date (WDFW 1997a).

The two subpopulations in the Dungeness River Basin occur partially within Olympic National Park and Buckhorn Wilderness Area, and likely benefit from the relatively undisturbed habitats located there. However, non-native brook trout occur in some streams in the park. Large portions of the Dungeness River Basin lie outside of Olympic National Park, and have been severely degraded by past forest and agricultural practices (Williams *et al.* 1975; WDFW 1997a). Within Olympic National Park, the lower and upper Elwha River subpopulations are isolated by dams. Biologists have observed few "native char" in the lower Elwha subpopulation in recent years. Since 1983, one or two individuals have been seen each year in a chinook salmon rearing channel located in the lower Elwha River (WDFW 1997a). A creel census, conducted in 1981 and 1982 on the Elwha River reservoirs of the upper Elwha River subpopulation, reported that "native char" were found in low numbers (WDFW 1997a). Although "native char" are believed to be widespread in some basins within the analysis area, such as the Dungeness and Gray Wolf rivers, fish abundance is thought to be "greatly reduced in numbers" (WDW, *in litt.* 1992; WDFW 1997a). Electrofishing surveys conducted in four sections of the upper Dungeness River subpopulation during 1996 recorded an overall "native char" density of 0.78 fish/meter (2.56 fish/foot) for the four sections (WDFW 1997a). These preliminary surveys indicate that the upper Dungeness River subpopulation may be "strong." We consider the lower Elwha River subpopulation "depressed" because less than 500 spawners likely occur in the subpopulation, and the lower Dungeness River-Gray Wolf River "depressed" because abundance has declined. The remaining three "native char" subpopulations in the Strait of Juan de Fuca coastal analysis area have "unknown" status because insufficient abundance, trend, and life-history information is available (Service 1998a).

Hood Canal Analysis Area

Three "native char" subpopulations occur in the Skokomish River Basin in the Hood Canal analysis area. Surveys by Brown (1992) and Brenkman (1996 in WDFW 1997) documented bull trout in Cushman Reservoir, and Leary and Allendorf (1997) and WDFW (1997a) documented bull trout in the South Fork-lower North Fork Skokomish River. Due to the construction of Cushman Dam on the North Fork Skokomish River, bull trout in Cushman Reservoir are isolated and restricted to an adfluvial life-history form. Spawner surveys, which began in 1973, indicate a decline in adult bull trout through the 1970s, subsequent increases from 4 adults in 1985 to 412 adults in 1993, and relatively stable numbers of 250 to 300 spawning adults in recent years (WDFW 1997a). The increase in adult bull trout from 1985 to 1993 is likely related to harvest closure on Cushman Reservoir and upper North Fork Skokomish River in 1986 (Brown 1992). Recent surveys indicate low numbers of bull trout in tributaries of the South Fork Skokomish River such as Church, Pine, Cedar, LeBar, Brown, Rock, Flat, and Vance creeks, as well as in the mainstem (Larry Ogg, Olympia National Forest (ONF), *in litt.* 1997). Past forest and agricultural practices and hydropower development have severely degraded habitat in the South Fork-lower North Fork Skokomish River (Williams *et al.* 1975; Hood Canal Coordinating Council (HCCC) 1995; WDFW 1997a). The upper North Fork Skokomish River subpopulation occurs within Olympic National Park and habitat is relatively undisturbed. We consider the South Fork-lower North Fork Skokomish River subpopulation "depressed," because fewer than 500 spawners and fewer than 5,000 individuals likely occur in the subpopulation. Although the number of spawning adult bull trout appears to have been relatively stable in the Cushman Reservoir subpopulation since 1990, under our analysis, this population is consider "depressed" based on the criteria used to determine subpopulation status (*i.e.*, less than 500 spawning adults). The status of the upper North Fork Skokomish subpopulation is considered "unknown" because insufficient abundance, trend, and life-history information is available (Service 1998a).

Puget Sound Analysis Area

Fifteen "native char" subpopulations occur in eight river basins in the Puget Sound analysis area (number of subpopulations)—Nisqually River (1), Puyallup River (2), Green River (1), Lake Washington Basin (2), Snohomish River-Skykomish River (1), Stillaguamish River (1), Skagit River (4), and Nooksack River (3). Recent surveys of seven "native char" subpopulations have documented bull trout in at least six—lower Puyallup (Carbon River), Green River, Chester Morse Reservoir, Snohomish River-Skykomish River, lower Skagit River, and upper Middle Fork Nooksack River (R2 Resource Consultants, Inc. 1993; Samora and Girdner 1993; Kraemer 1994; Michael Barclay, Cascades Environmental Services, Inc., pers. comm. 1997; Leary and Allendorf 1997; Eric Warner, Muckleshoot Indian Tribe, pers. comm. 1997). Leary and Allendorf (1997) identified only Dolly Varden in the Canyon Creek (tributary to the Nooksack River) subpopulation.

The current abundance of "native char" in southern Puget Sound is likely lower than occurred historically and declining (Tom Cropp, WDW, *in litt.* 1993; Fred Goetz, U.S. Army Corps of Engineers (COE), pers. comm. 1994a,b). Historical accounts from southern Puget Sound indicate that anadromous "native char" entered rivers there in "vast numbers" during the fall and were harvested until Christmas (Suckley and Cooper 1860). "Native char" are now rarely collected in the southern drainages of the area (T. Cropp, *in litt.* 1993; F. Goetz, pers. comm. 1994a,b). There is only one recent record of a "native char" being collected in the Nisqually River. A juvenile char was collected during a stream survey for salmon in the mid-1980s (George Walter, Nisqually Indian Tribe, pers. comm. 1997; WDFW 1997a). In the Puyallup River (lower Puyallup subpopulation), "native char" are occasionally caught by steelhead anglers (WDW, *in litt.* 1992; WDFW 1997a). In the White River (lower Puyallup subpopulation), counts of upstream migrating "native char" at the Buckley diversion dam have averaged 23 adults since 1987. Although trapping effort has varied during the past 11 years, annual counts have generally been poor to moderate, ranging from a low of 8 to a high of 46 adult "native char" (WDFW 1998a). In the Green River, "native char" are rarely observed (T. Cropp, *in litt.* 1993; F. Goetz, pers. comm. 1994a,b; E. Warner, pers. comm. 1997). Aquatic habitat in the Nisqually, Puyallup, and Green rivers has been variously degraded by logging, agriculture, road construction, and urban development. In the Chester Morse Reservoir

subpopulation, biologists observed fewer than 10 redds as recently as 1995 and 1996; and fry abundance was low in spring 1996 and 1997 (Dwayne Paige, Seattle Water Department, *in litt.* 1997). Logging and extensive road construction have occurred within the Basin (Foster Wheeler Environmental 1995; WDFW 1997a), and likely affected bull trout in Chester Morse Reservoir. Only two "native char" have been observed during the past 10 years in the Issaquah Creek drainage and none have been observed in the Sammamish River system, which are occupied by the Sammamish River-Issaquah Creek subpopulation. It is questionable whether a viable subpopulation remains. Habitat in the Sammamish River and Issaquah Creek drainages has been negatively affected by urbanization, road building and associated poor water quality (Williams *et al.* 1975; Washington Department of Ecology (WDOE) 1997). We consider the Nisqually River, Green River, Chester Morse Reservoir, Sammamish River-Issaquah Creek, and lower Puyallup subpopulations "depressed" based on fewer than 500 spawning adults and a decline in general abundance.

Drainages in the northern Puget Sound area appear to support larger subpopulations of "native char" than the southern portion (F. Goetz, pers. comm. 1994a, b; Steve Fransen, Service, pers. comm. 1997). The WDFW conducts redd counts in two index reaches of the northern Puget Sound; a reach in the upper South Fork Sauk River that is included in the lower Skagit River subpopulation, and a reach in the upper North Fork Skykomish River that is included in the Snohomish River-Skykomish River subpopulation. These areas are said to have healthy habitats supporting stable numbers of "native char" (Kraemer 1994). Biologists have conducted redd surveys since 1988 in both index reaches. In the upper South Fork Sauk River, WDFW (1997a) observed a substantial increase in redds in 1991, a year after a minimum 508-mm (20-in) harvest restriction was implemented; and redd numbers have remained relatively stable at or above 34. The State implemented harvest restrictions in the Skagit River and its tributaries in 1990. "Native char" in the lower Skagit River subpopulation have access to at least 38 documented or suspected spawning tributaries (WDFW *et al.* 1997) with the number of adults estimated to be 8,000 to 10,000 fish (Curt Kraemer, WDFW, pers. comm. 1998). The number of redds in the upper North Fork Skykomish River index reach have averaged 78 redds (range 21 to 159) during 1988 through 1996, with 75 or fewer redds observed between 1993 and 1996 (WDFW 1997a). A total of 170 redds were counted in 1997 (WDFW 1998a). Redd counts in the North Fork Skykomish River index reach have been more variable between years than the South Fork Sauk River index reach. The upper Skagit River is fragmented into three reservoirs from the construction of Gorge, Diablo, and Ross dams (WDFW 1997a). The primary spawning area for the Gorge Reservoir subpopulation is said to be the lower Steattle Creek and a portion of the Skagit River below Diablo Dam (WDFW 1997a). The primary spawning areas for the Diablo Reservoir subpopulation is thought be in the Thunder Arm area, including Fisher Creek (WDFW 1997a), although WDFW *et al.* (1997) did not locate any "native char" adults or juveniles upstream of the mouth of Thunder Creek during snorkel and electrofishing surveys. Within Ross Reservoir, it is reported that spawning occurs in lower reach areas of at least six tributaries, in addition to a portion of the upper Skagit River in Canada (WDFW 1997a). Biologists have documented "native char" spawning in at least seven creeks in the Stillaguamish River subpopulation and in five creeks and several mainstem areas of the Lower Nooksack River subpopulation. Biologists have also observed "native char" in at least four creeks in the upper Middle Fork Nooksack River subpopulation. Neither adult count data nor redd count data is available for these six subpopulations (WDFW 1997a). Within the Puget Sound analysis area, we consider the lower Skagit River subpopulation "strong," based on a large number of spawning adults and high overall abundance. We consider five subpopulations within the Puget Sound analysis area "depressed" and the status of the remaining nine "native char" subpopulations in the Puget Sound analysis area "unknown" because insufficient abundance, trend, and life-history information is available (Service 1998a).

Transboundary Analysis Area

One "native char" subpopulation occurs in the Chilliwack River Basin in the Transboundary analysis area. The Chilliwack River is a transboundary system flowing into British Columbia, Canada. We have not determined the species composition of this subpopulation. In Washington, portions of the Chilliwack River are within the North Cascades National Park and a tributary, Selesia Creek, are within the Mount Baker Wilderness where the habitat is relatively undisturbed (WDFW 1997a). Little information is available for "native char" in the Chilliwack River-Selesia Creek subpopulation (Service 1998a). The current status of the "native char" subpopulations in the Transboundary analysis area is "unknown" because insufficient abundance, trend, and life-history information is available (Service 1998a).

St. Mary-Belly River Population Segment

Much of the historical information regarding bull trout in the St. Mary-Belly River DPS is anecdotal and abundance information is limited. Bull trout probably entered the system via postglacial dispersal routes from the Columbia River through either the Kootenai River or Flathead River systems (Fredenberg 1996). The St. Mary River system historically contained native bull trout, lake trout, and westslope cutthroat trout. Although abundance of these fishes is unknown, the presence of lake trout suggests that migratory bull trout were restricted primarily to streams and rivers and not common in lakes (Donald and Alger 1993). Within the St. Mary River system, historic accounts of bull trout date to the 1930s (Fredenberg 1996). In the Belly River, historic distribution of bull trout in the Basin is limited but migratory bull trout from Canada likely spawned in the North Fork and mainstem Belly rivers.

Both migratory (fluvial) and resident life-history forms are present (Fredenberg 1996), although bull trout within the St. Mary-Belly River DPS are isolated and fragmented by irrigation dams and diversions (Fredenberg 1996; Clayton 1998; Robin Wagner, Service, pers. comm. 1998). Bull trout that migrate across the international border are dependent upon the relatively undisturbed water quality and spawning habitat located in the upper St. Mary and Belly rivers and their tributaries within the coterminous United States (Fredenberg 1996).

Based on natural and artificial barriers to fish passage within the St. Mary-Belly River DPS, we identified four bull trout subpopulations—(1) Upper St. Mary River (from the U.S. Bureau of Reclamation (USBR) diversion structure on lower St. Mary Lake upstream to St. Mary Falls, including Swiftcurrent and Boulder creeks below Lake Sherburne, and Red Eagle and Divide creeks); (2) Swiftcurrent Creek (including tributaries and Lake Sherburne and Cracker Lake); (3) lower St. Mary River (St. Mary River downstream of the USBR diversion structure including Kennedy, Otatso, and Lee creeks); and (4) Belly River (mainstem and North

Fork Belly River) (Service 1998b). Based on 1997 and 1998 trapping of post-spawning adults, fewer than 100 fish existed in the Boulder Creek and Kennedy Creek spawning populations (Lynn Kaeding, Service, *in litt.* 1998). These two streams include the strongest known spawning runs in the upper St. Mary River and lower St. Mary River subpopulations, respectively, and evaluation of these streams is continuing. Based on studies conducted in 1996 and 1997, the Belly River drainage is thought to contain fewer than 100 adult bull trout (Clayton 1998). The status of the upper St. Mary River, lower St. Mary River, and North Fork Belly River bull trout subpopulations is "depressed" because fewer than 500 spawning adults or 5,000 total bull trout occur in the subpopulations. The status of the Swiftcurrent Creek subpopulation is "unknown" because insufficient abundance, trend, and life-history information is available (Service 1998b).

In summary, we considered the information received during the public comment period on the abundance, trends in abundance, and distribution of bull trout in the Coastal-Puget Sound and St. Mary-Belly River population segments. The Coastal-Puget Sound population segment includes the only anadromous bull trout found in the coterminous United States. The population segment is composed of 34 "native char" subpopulations of which bull trout have been documented in 12 of 15 subpopulations examined. The remaining 19 subpopulations consist of "native char" that may include bull trout, Dolly Varden, or both species. At this time, the only "native char" documented in three of the subpopulations is Dolly Varden. Of the 34 subpopulations, we believe one is "strong," 10 are "depressed," and insufficient abundance, trends in abundance, and life-history information exists to assign either category to the remaining 23 subpopulations.

The St. Mary-Belly River population segment of bull trout is composed of four subpopulations and represents the only area of bull trout range east of the Continental Divide within the coterminous United States. Migratory fish occur in three of the subpopulations and the life-history form in the fourth subpopulation is unknown. Bull trout subpopulations in the St. Mary River Basin are isolated by impassable diversion structures. Three of the four subpopulations are "depressed" due to low abundance of fish, and the status of one subpopulation is "unknown" because insufficient abundance, trends in abundance, and life-history information exists to categorize the subpopulations as "strong" or "depressed."

Previous Federal Action

On October 30, 1992, we received a petition to list the bull trout as an endangered species throughout its range from the following conservation organizations in Montana: Alliance for the Wild Rockies, Inc., Friends of the Wild Swan, and Swan View Coalition (petitioners). The petitioners also requested an emergency listing and concurrent critical habitat designation for bull trout populations in select aquatic ecosystems where the biological information indicated that the species was in imminent danger of extinction. In our 90-day finding, published on May 17, 1993 (58 FR 28849), we determined that the petitioners had provided substantial information indicating that listing of the species may be warranted. We initiated a rangewide status review of the species concurrent with publication of the 90-day finding.

In our June 10, 1994, 12-month finding (59 FR 30254), we concluded that listing the bull trout throughout its range was not warranted due to unavailable or insufficient data regarding threats to, and status and population trends of, the species within Canada and Alaska. However, we determined that sufficient information on the biological vulnerability and threats to the species was available to support a warranted 12-month finding to list bull trout within the coterminous United States, but this action was precluded due to higher priority listings.

On November 1, 1994, Friends of the Wild Swan, Inc. and Alliance for the Wild Rockies, Inc. (plaintiffs) filed suit in the U.S. District Court of Oregon (Court) arguing that the warranted but precluded finding was arbitrary and capricious. After we recycled the petition and issued a new warranted but precluded 12-month finding for the coterminous population of bull trout on June 12, 1995 (60 FR 30825), the Court issued an order declaring the plaintiffs' challenge to the original finding moot. The plaintiffs declined to amend their complaint and appealed to the Ninth Circuit Court of Appeals, which found that the plaintiffs' challenge fell "within the exception to the mootness doctrine for claims that are capable of repetition yet evading review." On April 2, 1996, the Circuit Court remanded the case back to the District Court. On November 13, 1996, the Court issued an order and opinion remanding the original finding to us for further consideration. Included in the instructions from the Court were requirements that we limit our review to the 1994 administrative record, and incorporate any emergency listings or high magnitude threat determinations into current listing priorities. We delivered the reconsidered 12-month finding based on the 1994 Administrative Record to the Court on March 13, 1997. We concluded in the finding that two populations of bull trout warranted listing (Klamath River and Columbia River population segments).

On March 24, 1997, the plaintiffs filed a motion for mandatory injunction to compel us to issue a proposed rule to list the Klamath River and Columbia River bull trout populations within 30 days based solely on the 1994 Administrative Record. On April 4, 1997, we requested 60 days to prepare and review the proposed rule. In a stipulation between us and plaintiffs filed with the Court on April 11, 1997, we agreed to issue a proposed rule within 60 days to list the Klamath River population of bull trout as endangered and the Columbia River population of bull trout as threatened based solely on the 1994 record.

We proposed the Klamath River population of bull trout as endangered and Columbia River population of bull trout as threatened on June 13, 1997 (62 FR 32268). The proposal included a 60-day comment period and gave notice of five public hearings in Portland, Oregon; Spokane, Washington; Missoula, Montana; Klamath Falls, Oregon; and Boise, Idaho. The comment period on the proposal, which originally closed on August 12, 1997, was extended to October 17, 1997 (62 FR 42092), to provide the public with more time to compile information and submit comments.

On December 4, 1997, the Court ordered us to reconsider several aspects of the 1997 reconsidered finding. On February 2, 1998, the Court gave us until June 12, 1998, to respond. The final listing determination for the Klamath River and Columbia River population segments of bull trout and the concurrent proposed listing rule for the Coastal-Puget Sound, St. Mary-Belly River, and Jarbidge River DPSs constituted our response.

We published a final rule listing the Klamath River and Columbia River population segments of bull trout as threatened on June 10, 1998 (63 FR 31647). On the same date, we also published a proposed rule to list the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River population segments of bull trout as threatened (63 FR 31693). On August 11, 1998 (63 FR 42757), we issued an emergency rule listing the Jarbidge River population

segment of bull trout as endangered due to river channel alteration associated with unauthorized road construction on the West Fork of the Jarbidge River, which we found to imminently threaten the survival of the distinct population segment. On April 8, 1999 (64 FR 17110), we published the final rule to list the Jarbidge River population segment as threatened in the **Federal Register**.

Summary of Comments and Recommendations

In the June 10, 1998 (63 FR 31693), proposed rule, we requested interested parties to submit comments or information that might contribute to the final listing determination for bull trout. The proposed rule included the Coastal-Puget Sound, St. Mary-Belly River, and Jarbidge River bull trout DPSs. We sent announcements of the proposed rule and notice of public hearings to at least 800 individuals, including Federal, State, county and city elected officials, State and Federal agencies, interested private citizens, and local area newspapers and radio stations. We also published announcements of the proposed rule in 10 newspapers, which included the Idaho Statesman, Boise, Idaho; the Times-News, Twin Falls, Idaho; the Glacier Reporter, Browning, Montana; the Daily Inter Lake; Kalispell, Montana; the Great Falls Tribune, Great Falls, Montana; the Elko Daily Free Press, Elko, Nevada; the Bellingham Herald, Bellingham, Washington; the Olympian, Olympia, Washington; the Spokesman-Review, Spokane, Washington, and the Seattle Post-Intelligencer, Seattle, Washington. We held public hearings on July 7, 1998, in Lacey, Washington; July 9, 1998, in Mount Vernon, Washington; July 14, 1998, in East Glacier, Montana; and July 21, 1998, in Jackpot, Nevada. The comment period on the proposed rule closed on October 8, 1998.

We received 12 oral and 40 written comments on the proposed rule. These included comments from two Federal agencies, one Native American Tribe, three State agencies, one county in Nevada, three cities in Washington, and two private companies. In addition, we solicited formal scientific peer review of the proposal in accordance with our July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review. We requested six individuals, who possess expertise in bull trout biology and salmonid ecology, and whose affiliations include academia and Federal, State, and provincial agencies, to review the proposed rule by the close of the comment period. One individual responded to our request and we have addressed their comments in this section of the rule.

We considered all comments for the proposed rule for the Coastal-Puget Sound, St. Mary-Belly River, and Jarbidge River population segments, including oral testimony presented at the public hearings and the comments from the peer reviewer who responded to our request to review the proposed rule. The majority of comments supported the listing proposal and nine comments were in opposition. Opposition was based on several concerns, including possible negative economic effects from listing bull trout; potential restrictions on activities; lack of solutions to the bull trout decline that would result from listing; and interpretation of data concerning the status of bull trout and their threats in the three population segments. The U.S. Forest Service (USFS) (B. Siminoe, USFS, *in litt.* 1998); National Park Service (NPS) (David Morris, NPS, *in litt.* 1998), Idaho Department of Fish and Game (IDFG) (F. Partridge, IDFG, *in litt.* 1998; Partridge and Warren 1998), Nevada Division of Wildlife (NDOW) (T. Crawforth, NDOW, *in litt.* 1998; R. Haskins, NDOW, *in litt.* 1998), (Bruce Crawford, WDFW, *in litt.* 1998; WDFW 1998a), and Alberta Environmental Protection (AEP) (Duane Radford, AEP, *in litt.* 1998) provided us with information on respective agency efforts to assess, evaluate, monitor, and conserve bull trout in habitats affected by each agency's management for the three DPSs. Comments specific to the Jarbidge River population segment were addressed in the final rule determination for that DPS (April 8, 1999; 64 FR 17110). Comments specific to the Coastal-Puget Sound and St. Mary-Belly River population segments are addressed in this rule. Because multiple respondents offered similar comments, we grouped comments of a similar nature or point. These comments and our responses are presented below.

Issue 1: Several respondents opposed the Federal listing, while others supported it. Some respondents requested that we delay or preclude Federal listing until additional data on the Coastal-Puget Sound population segment are collected and considered, and one respondent based this on the belief that some subpopulations within the north Puget Sound region and the Olympic Peninsula appear to be stable or increasing, and other subpopulations occur in excellent or pristine habitat. A respondent asked if complete status and trend information is not available, whether changes in habitat or threats are sufficient to list a species, even if there is no indication that a population is in trouble. Another respondent noted we did not evaluate listing criteria with objective and quantitative methods, making it difficult to interpret new information in a consistent manner. The respondent also said that, although quantitative data are lacking for many local populations of bull trout, sufficient information exists to design an inventory program to describe their current distribution, relative abundance, and population structure.

Our Response: A species may be determined to be an endangered or threatened species due to the five factors identified in section 4(a)(1) of the Act and addressed in the "Summary of Factors Affecting the Species" section. The Act requires us to base listing determinations on the best available commercial and scientific information. Data are often not available to make statistically rigorous inferences about a species' status (*e.g.*, abundance, trends in abundance, and distribution). Overall, we found that sufficient evidence exists in each of the population segments that demonstrate they are threatened by a variety of past and ongoing threats, and are likely to become endangered in the foreseeable future.

In making this final determination, we took into account the overall status of bull trout in the coterminous United States. We acknowledge that three north Puget Sound subpopulations of bull trout (lower Skagit River, Stillaguamish River, and Snohomish River-Skykomish River supopulations) appear to be in better condition than subpopulations in other areas of the Coastal-Puget sound population segment. We determined that the lower Skagit subpopulation was "strong." The WDFW has identified "native char" spawning areas in a number of tributaries in the Stillaguamish River subpopulation, and reported them as stable or expanding based on limited spawner surveys of Boulder Creek and the upper Stillaguamish River (WDFW 1997a). However, Mongillo (1993) and WDFW (1997a) identified other areas of the Stillaguamish subpopulation, specifically Deer Creek and Canyon Creek, as declining. Although the 1997 redd count for the Snohomish-Skykomish River subpopulation was the highest since an index reach was established in 1988 (WDFW 1998a), redd counts have been highly variable over this time period, possibly indicating an unstable population. There is scant evidence that subpopulations within the Nooksack River are increasing or stable, although much of the habitat within the Nooksack River drainage has been

severely degraded (WDFW 1998a). The Cushman Reservoir subpopulation, on the Olympic Peninsula, appears to have an adult spawner return that has stabilized around 300 fish for the past 7 years (WDFW 1998a). The available spawning habitat for this subpopulation lies primarily within Olympic National Park and WDFW considers it to be in excellent condition (WDFW 1998a). In contrast, bull trout in the South Fork-lower North Fork Skokomish River occur in low numbers with no known spawning sites. Habitat in the south Fork and lower North fork Skokomish River is severely degraded (WDFW 1998a).

Conversely, we have ample information regarding threats to the Coastal-Puget Sound population segments. Many of the threats are similar to those described for the threatened Klamath River and Columbia River bull trout population segments (June 10, 1998; 63 FR 31647). We acknowledge that available information is insufficient to designate many of the subpopulations within the Coastal-Puget Sound population segment as "strong" or "depressed." However, because bull trout display a high degree of sensitivity to environmental disturbance and are referred to as an indicator species, we believe that bull trout are significantly impacted by past and current habitat degradation within the Coastal-Puget Sound population segment, similar to other listed and sensitive species (i.e., salmon). Habitat loss and degradation is acknowledged as a significant factor limiting salmon and trout populations within Washington (Washington Department of Fisheries (WDF) *et al.* 1993; Weitkamp *et al.* 1995; Busby *et al.* 1996; Spence *et al.* 1996; WDFW 1997a, b). Although a number of subpopulations have documented spawning and rearing habitat in protected areas of watersheds, the spawning and rearing habitats of many other subpopulations are not identified. In addition, habitats used by other life-history stages for migration, overwintering, sub-adult rearing, are degraded, and all life-history stages are required for a species to persist. See the "Summary of Factors Affecting the Species" section for a more complete discussion of threats affecting bull trout.

Because the location of spawning areas for many bull trout subpopulations are not well known for the Coastal-Puget Sound population segment, we have been funding efforts to determine the distribution of spawning areas in various Coastal-Puget Sound subpopulations. Although estimates of bull trout abundance based on redd counts will provide information on which to evaluate the status of "native char" subpopulations, the method should be used with caution. For example, in analyzing counts of bull trout redds in Idaho and Montana, Rieman and Myers (1997) found that variability of counts in individual streams reduces the ability to detect trends, especially with data sets for relatively short periods. They caution that detection of trends will often require more than 10 years of sampling, even where declines could be large, and for many bull trout spawning reaches, declining trends may not be statistically evident until numbers drop to critically low levels. Given the lack or limitations of statistically rigorous data for bull trout in the Coastal-Puget Sound population segment, our review of the status of "native char" subpopulations is based on the generally low number of individuals observed in several subpopulations throughout the population segment, and the apparent declines reported in others.

Issue 2: A respondent noted that the proposed rule considered that loss of the St. Mary-Belly River population segment would constitute a significant reduction in the range of the taxon. They asked what portion of the range is significant, and would the statement be true for the St. Mary-Belly River population segment if fish in Canada were considered. They also inquired whether bull trout in the population segment are distinct from fish east of the Continental Divide in Canada. Because a large portion of the St. Mary-Belly River population segment occurs on the Blackfeet Reservation, another respondent requested that we establish government-to-government relations with the Blackfeet Tribe, expressing concern that Tribal comments and interactions with us were considered similarly to those from the general public and not on a government-to-government basis.

Our Response: We considered both biological (available data) and administrative (international boundary) issues in determining distinct population segments. Policy used to guide determination of distinct population segments is described in the joint National Marine Fisheries Service (NMFS) and Service policy for recognizing distinct vertebrate population segments under the Act (February 7, 1996; 61 FR 4722). Although we are not including bull trout in Canada in the St. Mary-Belly River population segment, fish are believed to migrate across the international boundary. Determination of a significant reduction in range was based only on bull trout occurring within the coterminous United States, of which loss of the population segment would result in elimination of all bull trout east of the Continental Divide. Mogen (1998) noted genetic work that indicated bull trout from the upper St. Mary River drainage in Glacier National Park and the Belly River in Alberta form a genetically similar group, and bull trout collected from other areas in southern Alberta form another (Thomas *et al.* 1997, cited in Mogen 1998). Genetic analysis of tissue samples collected in the St. Mary River drainage during 1997 is not complete (Mogen 1998).

Regarding governmental relations, a June 1997 Secretarial Order on Federal-Tribal trust responsibilities and the Act, clarifies responsibilities of agencies relative to Tribal lands, rights, and trust resources in implementing the Act. A cooperative agreement among us, the Blackfeet Tribe, and Bureau of Reclamation establishes a partnership focused on the conservation and restoration of native salmonids and habitat in the St. Mary River drainage. Mogen (1998) presents results of a study to investigate bull trout spawning areas and fish abundance conducted pursuant to the cooperative agreement. We have met with representatives of the Blackfeet Tribe to address concerns about bull trout and government-to-government relations.

Issue 3: One respondent noted that criteria we used to determine the status of subpopulations were adopted from Rieman *et al.* (1997), who originally developed them to apply to 6th field watersheds in the Interior Columbia Basin Ecosystem Management Project (ICBEMP). Because fish in 6th field watersheds are roughly equivalent to local populations (see Rieman and McIntyre 1995), using the criteria may be inconsistent with subpopulations as defined in the proposed rule. Also, several respondents were concerned about applying the criteria to the Coastal-Puget Sound population segment for evaluating whether a subpopulation is "strong" or "depressed." One respondent asked whether our definition of subpopulation designation required absolute reproductive isolation or only some level of structuring that means reduced gene flow and some local adaptation, and whether subpopulations can compose a larger metapopulation or if a metapopulation is equivalent to a subpopulation. Another respondent contended that some dams were not isolating mechanisms for subpopulations (Middle Fork Nooksack, Skagit, and Nisqually rivers) because

they believe the dams were constructed at natural barriers.

Our Response: In adopting the criteria, we considered a bull trout subpopulation "strong" if 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears stable or increasing, and life-history forms historically present were likely to persist; and "depressed" if less than 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears to be declining, or a life-history form historically present has been lost (see Rieman *et al.* 1997). If there was insufficient abundance, trend, and life-history information to classify the status of a subpopulation as either "strong" or "depressed," we considered status as "unknown."

We used these criteria because they represent the best available information and were used in evaluating bull trout in the Klamath River and Columbia River population segments. We acknowledge the criteria were originally developed for application to salmonids in the Columbia River Basin, but their underlying premises are based on concepts of conservation biology. Whether a subpopulation is "strong" or "depressed" relative to its potential may vary among population segments. However, we were unable to refine these criteria, either higher or lower, based on the available data. Designating a subpopulation as "strong" or "depressed" is only one of several factors that we considered in evaluating the overall status of a bull trout subpopulation in a given population segment.

Regarding the use of 6th field watersheds, we acknowledge the different spatial scales used in applying criteria developed by Rieman *et al.* (1997) for ICBEMP in our evaluation of bull trout subpopulations. Subpopulations identified in the population segments for bull trout in the coterminous United States (see June 10, 1998; 63 FR 31647) ranged in size from a portion of a single watershed unit used by ICBEMP to several watersheds. For example, the best available information concerning bull trout and "native char" in the Coastal-Puget Sound population segment was based on a spatial scale consisting of up to several ICBEMP watershed units. Although the spatial scale of most subpopulations identified in the proposed rule occupy multiple ICBEMP watershed units, we believe that the criteria offered useful information in evaluating the status of bull trout.

We selected subpopulations as a convenient unit on which to analyze bull trout within population segments, and defined subpopulation as "a reproductively isolated group of bull trout that spawns within a particular area of a river system." We identified subpopulations based on documented or likely barriers to fish movement (*e.g.*, impassable barriers to movement and unsuitable habitat). To be considered a single subpopulation, two-way passage at a barrier is required, otherwise bull trout upstream and downstream of a barrier are each considered a subpopulation. Because it is likely that fish above a barrier could pass downstream and mate with fish downstream, absolute reproductive isolation was not required to be considered a subpopulation.

We viewed metapopulation concepts (see Rieman and McIntyre 1993) as useful tools in evaluating bull trout, but, in querying biologists both within the Service and elsewhere, we found considerable variability in the definition of a metapopulation and the types of data suggestive of a metapopulation. Some biologists may consider a subpopulation, as defined by us, as a metapopulation if it has multiple spawning areas. Likewise, subpopulations without reciprocal interactions (*i.e.*, individuals from upstream of a barrier may mingle with individuals downstream, but not vice versa) may be considered components of a metapopulation consisting of more than one subpopulation. Because little genetic and detailed movement information exists throughout bull trout range in the population segments addressed in the proposed rule, we believe that barriers to movement is an appropriate consideration for identifying subpopulations.

Relative to dams, the WDFW (1998a) believes that bull trout were able to commingle on both the Middle Fork Nooksack River and the Skagit River prior to construction of the dams. There may have been a natural barrier between La Grande and Alder dams on the Nisqually River. Because the existence of "native char" above Alder Dam is not established, we chose not to identify this area as a separate subpopulation. Regardless, the DPS discreteness criterion can be satisfied by natural or man-made barriers.

Issue 4: Several respondents believed the Federal listing was not necessary due to current and recently improved regulations related to forest land management.

Our Response: We believe that implementation of the Northwest Forest Plan (NFP) and Washington Department of Natural Resources (WDNR) Habitat Conservation Plan (HCP) should limit further degradation to aquatic habitats from future forest management practices for the Coastal-Puget Sound population segment. Only about 32 percent of the Coastal-Puget Sound population segment is covered by either one of these two plans. An additional 15 percent of the population segment resides on National Park lands. Bull trout in this population segment will continue to be negatively affected by severely degraded habitats in many subbasins where "native char" occur (*e.g.*, increased stream temperatures and sedimentation, altered stream flows, and lack of instream cover). These effects are expected to continue because many river basins affected by past, poor forest practices that contain "native char" will take decades to fully recover.

Approximately 45 percent of the Coastal-Puget Sound population segment occurs on lands under private ownership. Timber harvest activities on lands in forest production are subject to Washington State Forest Practice Rules (WFPR). Although State rules and regulations governing forested land management activities on private lands are improving, we believe they are not adequate to conserve and recover bull trout or remedy the effects of past damage to bull trout habitats (U.S. Department of Interior (USDI) et al. 1996a). The WFPR are currently being renegotiated, and it is anticipated that there will be some improvements over past rules. Because the State has not issued new rules, we are unable to evaluate their adequacy to conserve and recover bull trout on private lands within the Coastal-Puget Sound area. If improved sufficiently, these rules could form the basis for a delisting, 4(d) rule, or HCP.

Issue 5: The U.S. Forest Service proposed that we issue a special rule pursuant to section 4(d) of the Act that would relax the prohibition against incidental take associated with Federal actions consistent with the NFP. Another respondent requested that we develop a special rule that was sufficiently protective to address any threat to bull trout from a specific development project.

Our Response: Under section 4(d) of the Act, we have the authority to issue regulations as deemed necessary and advisable to provide for the conservation of a species listed as threatened. We recognize that on-going and future land-use activities will occur on non-Federal lands and that these activities may result in take of bull trout. Elsewhere in today's **Federal Register** we have published a Notice of Intent to prepare another special rule pursuant to section 4(d) of the Act for bull trout within the coterminous

United States (see "Special Rule" section). The special rule would address two categories of non-Federal activities affecting bull trout: (1) Habitat restoration; and (2) regulations that govern land and water management activities. Special regulations addressing both categories would provide for the conservation of bull trout. We have already issued two special rules, one for Jarbidge River population segment on April 8, 1999, and the other for the Klamath and Columbia River population segments on June 10, 1998. In general, these special rules exempt from the take prohibition fishing and activities that are conducted in accordance with State, Tribal, and NPS laws and regulations governing fish and wildlife conservation. The special rule for the Coastal Puget-Sound and St. Mary-Belly population segments, described in the "Special Rule" section, will also exempt from the take prohibition fishing and activities conducted in accordance with State, Tribal, and NPS laws and regulations.

A proposal to relax the prohibition against incidental taking of bull trout associated with Federal actions consistent with the NFP Aquatic Conservation Strategy (ACS) is an option we may address in the future. There are a number of issues regarding the interpretation of ACS objectives and ACS components that are being discussed at an interagency level, but currently remain unresolved. It would not be prudent for us to consider a 4(d) rule until these discussions are concluded and the issues are satisfactorily resolved. The NFP applies to Federal lands in the Coastal-Puget Sound population segment. Although we have not finalized a programmatic biological opinion, we have re-initiated programmatic consultations with three National Forests, including conferencing on bull trout with the USFS regional office for those three National Forests. Thus, we will address Federal actions consistent with the NFP either through section 7 of the Act or through a 4(d) rule.

Issue 6: One respondent felt it was inappropriate to include in the final rule those streams or stream segments where only "native char" or both bull trout and Dolly Varden are documented to date. One respondent suggested the listing of bull trout will be a (de facto) listing of Dolly Varden, due to their similarities in appearance and life-history characteristics.

Our Response: It is true that species composition is not yet known in many streams in Washington containing "native char." However, bull trout are documented in most streams that biologists have investigated (12 of 15 subpopulations). We are funding WDFW to collect and analyze bull trout tissue samples in an effort to determine the genetic identity of "native char" in the 19 subpopulations that biologists have not evaluated. Information from these studies may eventually be used to exclude stream systems with only Dolly Varden from the listing, if we are satisfied that bull trout are not present in the system. Based on the available evidence, we believe there is a high likelihood that bull trout occur in the majority of the remaining 19 subpopulations. For subpopulations that contain both bull trout and Dolly Varden it is completely appropriate to include those subpopulations in the listing.

Bull trout and Dolly Varden are virtually indistinguishable based upon physical appearance (Service 1998a) and share similar life-history strategies and habitat requirements. Because of these similarities, the WDFW manage the two species as one (WDFW 1998a), and we can evaluate the threats to subpopulations currently known only as "native char." Although the listing currently does not include Dolly Varden under the similarity of appearance rule, the coexistence of Dolly Varden and bull trout within a certain subpopulation would not be justification to preclude listing of bull trout in that particular subpopulation. Finally, there is no evidence demonstrating strong Dolly Varden subpopulations coexisting with depressed bull trout subpopulations.

Issue 7: One respondent said we failed to identify and properly address other threats to bull trout, primarily the reduction in the bull trout forage base as a result of the commercial and recreational harvest of returning salmon and steelhead.

Our Response: Ratliff and Howell (1992) suggest that due to its highly piscivorous nature, bull trout may have been adversely affected by declines in prey species. They present the example of declining bull trout populations occurring above Hells Canyon Dam, where there is no longer anadromous salmon and steelhead production. We acknowledge that the depressed status or declining abundance of anadromous fish stocks in some river basins may have negatively affected bull trout through a decreased prey base. However, we are unable to determine from the available information whether this is a threat or just a suppressing factor to bull trout since they are opportunistic feeders and forage on a wide variety of prey. In addition, we are unable to determine whether current escapement goals set for anadromous salmon and steelhead are at levels that may limit bull trout. A threat would clearly exist where anadromous fish stocks are no longer accessible to a bull trout subpopulation, and it is determined that an alternative forage base does not exist.

Issue 8: One respondent questioned the rationale of our exclusion of bull trout in Canada in delineating distinct population segments. The respondent stated that bull trout in Canada were excluded because fish there are outside the jurisdiction of the Act or that listing would not have much effect on the Canadian government, as opposed to the explanation in the proposed rule that data for bull trout in Canada are limited and suggested we should clarify the issue.

Our Response: We acknowledge that additional information concerning the status and threats to bull trout in Canada has been compiled in recent years. Some of the available data indicate a decline of bull trout in several areas in Canada. Although we recognize that more data on bull trout in Canada currently exist than we originally considered, this new information did not lead us to conclude that listing the bull trout in Canada is necessary at this time. We believe that addressing bull trout only in the coterminous United States relative to the Act is appropriate. We acknowledge that for threatened or endangered species that cross international boundaries, recovery is more complex. For areas where bull trout subpopulations cross international boundaries, we intend to work with all appropriate jurisdictional entities, Tribal, provincial and Federal Canadian agencies and all entities in the United States, in developing and implementing a recovery plan for bull trout.

Issue 9: One respondent noted that critical habitat is presently not determinable. They noted that consistent patterns in juvenile fish distribution, primarily with respect to stream elevation and water temperature, is useful in predicting patches of spawning and rearing habitats, which are probably sensitive to land use and important for the overall productivity of local populations. Another respondent asked us to consider including as critical habitat, streams that contribute to the water quality of Puget Sound, but are not part of the current known distribution of bull trout. Several respondents encouraged us to consider several issues, such as designating all historic and existing bull trout habitat as critical, protecting roadless and riparian areas, establishing standards for water temperature, sediment delivery, and

other habitat parameters and other management activities.

Our Response: The definition of critical habitat as stated in section 3 of the Act holds that critical habitat may include specific areas outside of the geographical area occupied by the species at the time it is listed, upon determination that such areas are essential for the conservation of the species. At this time, we find that critical habitat is not determinable for the Coastal-Puget Sound and St. Mary-Belly River population segments. We appreciate the comments and believe that patterns in fish distribution will likely be useful in determining future critical habitat designations. This and other habitat considerations will be important issues to be considered during development of the recovery plan.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determine the Coastal-Puget Sound and St. Mary-Belly River population segments of bull trout to be threatened species. We followed procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Coastal-Puget Sound and St. Mary-Belly River population segments of bull trout (Salvelinus confluentus) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Land and water management activities that degrade bull trout habitat and continue to threaten all of the bull trout population segments in the coterminous United States include dams, forest management practices, livestock grazing, agriculture and agricultural diversions, roads, and mining (Beschta *et al.* 1987; Chamberlin *et al.* 1991; Furniss *et al.* 1991; Meehan 1991; Nehlsen *et al.* 1991; Sedell and Everest 1991; Craig and Wissmar 1993; Frissell 1993; Henjum *et al.* 1994; McIntosh *et al.* 1994; Wissmar *et al.* 1994; USDA and USDI 1995, 1996, 1997; Light *et al.* 1996; MBTSG 1995a–e, 1996a–h).

Coastal-Puget Sound Population Segment

Barriers, timber harvesting, agricultural practices, and urban development are thought to be major factors affecting "native char" in the Coastal-Puget Sound DPS (Service 1998a). Bull trout are often migratory (Fraley and Shepard 1989; Pratt 1992; Rieman and McIntyre 1993; Oregon Department of Fish and Wildlife (ODFW) 1995; McPhail and Baxter 1996), and migratory "native char" exhibit anadromous, adfluvial, and fluvial strategies in the Coastal-Puget Sound DPS. Factors affecting "native char" may preclude or inhibit migratory behavior or contribute to degradation of aquatic habitats used by "native char" (Rieman and McIntyre 1993; Spence *et al.* 1996; WDFW 1997a).

Past forest management activities have contributed to degraded watershed conditions, including increased sedimentation of bull trout habitat (Salo and Cundy 1987; Meehan 1991; Bisson *et al.* 1992; USDA *et al.* 1993; Henjum *et al.* 1994; Spence *et al.* 1996). Past activities continue to negatively affect "native char" in the Coastal-Puget Sound population segment. Timber harvest and road building in riparian areas reduce stream shading and cover, channel stability, large woody debris recruitment, and increase sedimentation and peak stream flows (Chamberlin *et al.* 1991). These can alternatively lead to increased stream temperatures and bank erosion, and decreased long-term stream productivity. Over 35 percent of natural forested areas in Puget Sound have been eliminated (WDFW 1997b).

Strict cold water temperature requirements make bull trout particularly vulnerable to activities that warm spawning and rearing waters (Goetz 1989; Pratt 1992; Rieman and McIntyre 1993). Increased temperature reduces habitat suitability, which can exacerbate fragmentation within and between subpopulations (Rieman and McIntyre 1993). Of the 34 "native char" subpopulations in the Coastal-Puget Sound population segment, 11 are likely affected by elevated stream temperatures resulting from past forest practices (lower Nooksack River, Stillaguamish River, Snohomish River-Skykomish River, Green River, lower Puyallup, Nisqually River, South Fork-lower North Fork Skokomish, River, Goodman Creek, Copalis River, Moclips River, and Chehalis River-Grays Harbor) (Phinney and Bucknell 1975; Williams *et al.* 1975; Hiss and Knudsen 1993; WDFW 1997a; WDOE 1997). Bull trout are documented in three of these "native char" subpopulations (Green River, South Fork-lower North Fork Skokomish River, and Snohomish River-Skykomish River).

The effects of road construction and associated maintenance account for a majority of sediment loads to streams in forested areas (Shepard et al. 1984; Cederholm and Reid 1987; Furniss *et al.* 1991). Sedimentation affects streams by reducing pool depth, altering substrate composition, reducing interstitial space, and causing braiding of channels (Rieman and McIntyre 1993), which reduce carrying capacity. Sedimentation negatively affects bull trout embryo survival and juvenile bull trout rearing densities (Shepard *et al.* 1984; Pratt 1992). In National Forests in Washington, large deep pools have been reduced 58 percent due to sedimentation and loss of pool-forming structures such as boulders and large wood (USDA *et al.* 1993). The effects of sedimentation from roads and logging are prevalent in 10 basins containing "native char" subpopulations (Nooksack, Skykomish, Stillaguamish, Puyallup, upper Cedar, Skokomish, Dungeness, Hoh, Queets, and Coastal Plain-Quinault basins) (HCCC 1995; Olympic National Forest 1995a,b; Sandra Noble and Shelley Spalding, Service, *in litt.* 1995; WDFW 1997a, WDOE 1997). Bull trout are documented in six of these basins (upper Cedar, Skokomish, Dungeness, Queets, Quinault, and Skykomish basins). We consider five subpopulations within these basins to be "depressed". These are the Chester Morse Reservoir, lower Puyallup River, South Fork-lower North Fork Skokomish River, lower Dungeness-Gray Wolf, and Hoh River subpopulations. The remaining six affected subpopulations found in Canyon Creek, upper Middle Fork Nooksack River, Snohomish River-Skykomish River, Stillaguamish River, Queets River, and lower Quinault River are considered "unknown."

A recent assessment of the interior Columbia Basin ecosystem revealed that increasing road densities were associated with declines in four non-anadromous salmonid species (bull trout, Yellowstone cutthroat trout, westslope cutthroat trout, and redband trout) within the Columbia River Basin, likely through a variety of factors associated with roads (Quigley and Arbelbide 1997). Bull trout were less likely to use highly roaded basins for spawning and rearing, and if present, were likely to be at lower population levels (Quigley and Arbelbide 1997). Quigley *et al.* (1996) demonstrated that when average road densities were between 0.4 to 1.1 km/km^2 (0.7 and 1.7 mi/mi^2) on USFS lands, the proportion of subwatersheds supporting "strong" populations of key salmonids dropped substantially. Higher road densities were associated with further declines.

When USFS lands were compared to lands administered by all other entities at a given road density, the proportion of lands supporting "strong" bull trout populations was lower on lands administered by other entities. Although this assessment was conducted east of the Cascade Mountain Range, some effects from high road densities may be more severe in western Washington. Higher precipitation west of the Cascade Mountains increases the frequency of surface erosion and mass wasting (USDI *et al.* 1996b). Limited data concerning road densities are available for the Coastal-Puget Sound DPS. It is known, however, that two bull trout subpopulations (lower Dungeness River-Gray Wolf River and Chester Morse Reservoir) occur in basins with road densities greater than 1.1 km/km² (1.7 mi/mi²), and the effects of sedimentation from high road density on aquatic habitat is likely a contributing factor to the "depressed" status of these two "native char" subpopulations. Because basins in portions of the Queets River drainage contain high road densities, ranging from 1.5 to 3.0 km/km² (2.4 to 4.8 mi/mi²) (ONF 1995a; Cederholm and Reid 1987), we believe that the Queets River "native char" subpopulation is affected by high road density.

At least 22 "native char" subpopulations within the Coastal-Puget Sound DPS are affected by past or present forest management activities. Remaining subpopulations not affected by such activities occur primarily within National Parks or Wilderness Areas. For example, five "native char" subpopulations lie completely within National Parks and Wilderness Areas withdrawn from timber harvest. These include the upper Quinault River, upper Sol Duc River, Gorge Reservoir, Diablo Reservoir, and Ross Reservoir subpopulations. Although the status of these "native char" subpopulations is considered "unknown" at this time, all except the upper Quinault River subpopulation are threatened by non-native brook trout (see Factor E).

Agricultural practices and associated activities also affect "native char" and their aquatic habitats. Irrigation withdrawals including diversions can dewater spawning and rearing streams, impede fish passage and migration, and cause entrainment. Discharging pollutants such as nutrients, agricultural chemicals, animal waste and sediment into spawning and rearing waters is also detrimental (Spence *et al.* 1996). Agricultural practices regularly include stream channelization and diking, large woody debris and riparian vegetation removal, and bank armoring (Spence *et al.* 1996). Improper livestock grazing can promote streambank erosion and sedimentation, and limit the growth of riparian vegetation important for temperature control, streambank stability, fish cover, and detrital input. In addition, grazing often results in increased organic nutrient input in streams (Platts 1991). Eight "native char" subpopulations in the Coastal-Puget Sound DPS (lower Puyallup, Stillaguamish River, lower Skagit River, lower Nooksack River, Green River, South Fork-lower North Fork Skokomish River, Dungeness River-Gray Wolf River, and Chehalis River-Grays Harbor) are subject to the effects of past or ongoing agricultural or livestock grazing practices (Williams *et al.* 1975; Hiss and Knudsen 1993; WDF *et al.* 1993; HCCC 1995; ONF 1995b; WDFW 1997a). Species composition has been examined in five of these subpopulations, and bull trout are documented in four (Green River, lower Puyallup, South Fork-lower North Fork Skokomish River, and Dungeness River-Gray Wolf River).

Dams constructed with poorly designed fish passage or without fish passage create barriers to migratory "native char," precluding access to suitable spawning, rearing, and migration habitats. Dams disrupt the connectivity within and between watersheds essential for maintaining aquatic ecosystem function (Naiman *et al.*1992; Spence *et al.* 1996) and bull trout subpopulation interaction (Rieman and McIntyre 1993). Natural recolonization of historically occupied sites can be precluded by migration barriers (e.g., McCloud Dam in California (Rode 1990)). Within the Coastal-Puget Sound DPS, there are at least 41 existing or proposed hydroelectric projects regulated by the Federal Energy Regulatory Commission (FERC) within watersheds supporting "native char" (Gene Stagner, Service, *in litt.* 1997). Of the 41 existing or proposed projects, 17 are currently operating and most are run-of-the-river small hydroelectric projects. Negotiated instream flows for these projects are based primarily on resident cutthroat trout or rainbow trout flow requirements, and may not meet seasonal migratory flow requirements of bull trout (Tim Bodurtha, Service, *in litt.* 1995). Fish passage has not been addressed for 28 of the existing or proposed projects (G. Stagner, *in litt.* 1997). We are aware of at least seven water diversions or other dams currently operating in watersheds with "native char," and none currently providing for upstream fish passage. These diversions and dams are located on the Middle Fork Nooksack, Skagit, Green, Puyallup, and Nisqually rivers. These seven facilities currently affect the lower Nooksack River, upper Middle Fork Nooksack River, lower Skagit River, Gorge Reservoir, Diablo Reservoir, Ross Reservoir, lower Puyallup, upper Puyallup River subpopulations. Projects in the Green and Nisqually rivers block fish passage in the upper stream reaches of these basins, although "native char" use of the river areas above the facilities remains unconfirmed. Various fish surveys conducted in the upper Green River watershed above the facility, did not detect "native char" (Ed Connor and Phil Hilgert, R2 Resource Consultants, Inc., *in litt.* 1998). Surveys of the upper Nisqually River watershed are underway (WDFW 1998a). Dams on the Skokomish and Elwha rivers are also barriers to upstream fish migration and have fragmented populations of "native char" within the Coastal-Puget Sound DPS. FERC published an Environmental Impact Statement (EIS) for three proposed hydroelectric projects on Skagit River tributaries. The final EIS recommends two proposed hydroelectric projects on the lower Nooksack River, affecting two subpopulations, the lower Skagit River and the lower Nooksack River. We consider the status of these subpopulations "strong" and "unknown," respectively.

Urbanization has led to decreased habitat complexity (uniform stream channels and simple nonfunctional riparian areas), impediments and blockages to fish passage, increased surface runoff (more frequent and severe flooding), and decreased water quality and quantity (Spence *et al.* 1996). In the Puget Sound area, human population growth is predicted to increase by 20 percent between 1987 and 2000, requiring a 62 percent increase in land area developed (Puget Sound Water Quality Authority (PSWQA) 1988 in Spence *et al.*1996). The effects of urbanization, concentrated at the lower most reaches of rivers within Puget Sound, primarily affect "native char" migratory corridors and rearing habitats. Five "native char" subpopulations in the Coastal-Puget Sound DPS (lower Dungeness River-Gray Wolf River, lower Puyallup River, Green River, Sammamish River-Issaquah Creek, and Stillaguamish River) are negatively affected by urbanization (Williams *et al.* 1975; WDFW 1997a).

Mining can degrade aquatic systems by generating sediment and heavy metals pollution, altering water pH levels, and changing stream channels

and flow (Martin and Platts 1981). Although not currently active, mining in the Nooksack River Basin, where "native char" occur, has adversely affected streams. For example, the Excelsior Mine on the upper North Fork Nooksack River was active at the turn of the century and mining spoils were placed directly into Wells Creek (Mt. Baker-Snoqualmie National Forest (MBSNF) 1995), a known spawning stream for "native char." Spoils in and adjacent to the stream may continue to be sources of sediment and heavy metals.

St. Mary-Belly River Population Segment

Forest management practices, livestock grazing, and mining are not thought to be major factors affecting bull trout in the St. Mary-Belly River DPS. However, bull trout subpopulations are fragmented and isolated by dams and diversions (Fredenberg 1996; Clayton 1998; Mogen 1998). Specifically, the USBR diversion at the outlet of lower St. Mary Lake is an unscreened trans-Basin diversion (*i.e.*, transferring water to the Missouri River drainage via the Milk River) that threatens the species in the St. Mary River Basin (upper St. Mary River, lower St. Mary River, and Swiftcurrent Creek subpopulations). This diversion restricts upstream bull trout passage into the upper St. Mary River. Consequently, migratory (fluvial) bull trout are prevented from reaching suitable spawning habitat in Divide and Red Eagle creeks (Fredenberg 1996; R. Wagner, pers. comm. 1998). Similarly, the irrigation dam on Swiftcurrent Creek (Lake Sherburne) physically blocks bull trout passage into the upper watershed (Fredenberg 1996; R. Wagner, pers. comm. 1998), affecting the three St. Mary River subpopulations. In the Belly River drainage, two adult bull trout implanted with radio transmitters that spawned in the North Fork Belly River near the international border in 1997 were subsequently passed down the Mountain View Irrigation District Canal and captured (Terry Clayton, Alberta Conservation Association (ACA), *in litt.* 1998).

In addition to the dams physically isolating subpopulations, the associated diversions seasonally dewater the streams, effectively decreasing available habitat for migratory and resident bull trout (Fredenberg 1996). The diversion at the outlet of lower St. Mary Lake may result in a reduction (up to 50 percent) of instream flow of the St. Mary River, possibly affecting juvenile and adult bull trout (R. Wagner, pers. comm. 1998). The diversion is unscreened and recent information suggests downstream loss through entrainment of bull trout (R. Wagner, pers. comm. 1998). Similarly, the irrigation dam on Swiftcurrent Creek (Lake Sherburne) seasonally dewaters the creek downstream, effectively eliminating habitat (Fredenberg 1996; R. Wagner, pers. comm. 1998).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Declines in bull trout abundance have prompted States to institute restrictive fishing regulations and eliminate the harvest of bull trout in most waters in Idaho, Oregon, Montana, Nevada, and Washington. These more restrictive regulations resulted in an increase in recent observations of adult bull trout in some areas of their range. However, illegal harvest and incidental hook and release of "native char" in fisheries targeting other species still threaten bull trout in some areas.

Coastal-Puget Sound Population Segment

Fishing for "native char" is currently closed in most of the waters within the Coastal-Puget Sound population segment. The State of Washington implemented most of these closures in 1994. Harvest of "native char" is still allowed in the area of the lower Skagit River subpopulation in the mainstem Skagit River and several of its tributaries (Cascade, Suiattle, Whitechuck and Sauk rivers) (508 mm (20 in.) minimum size limit and two fish daily bag limit); the Snohomish River-Skykomish River subpopulation in the Snohomish River mainstem and the Skykomish River below the forks (508 mm (20 in.) minimum size limit and two fish daily bag limit) (WDFW 1997a); and portions of the Quinault and Queets rivers that are within the Quinault Indian Reservation (QIN) boundary (4 fish daily bag limit with no minimum size restriction) (Scott Chitwood, Quinault Indian Nation, pers. comm. 1997; WDFW 1997a). Olympic National Park has recently closed fishing for "native char" in all park waters (D. Morris, *in litt.* 1998). Fishing for bull trout in Mount Rainier National Park is prohibited. There is likely some mortality from incidental hook and release of "native char" in fisheries targeting other species, especially in streams where restrictive angling regulations (*i.e.*, artificial flies or lures with barbless single hook, bait prohibited) are not established.

The objective of the 508 mm (20 in.) minimum size limit in the Skagit River and Snohomish-Skykomish River systems is to allow most females to spawn at least once before harvest (WDFW 1997a), and evidence suggests that more females are allowed to spawn in these two systems where the regulation is in place (WDFW 1998b). However, the minimum size limit allows the selective harvest of larger, mature fish that are more fecund (Jim Johnston, WDFW, pers. comm. 1995).

Regulations on the Quinault Indian Reservation in the lower Quinault River and Queets River systems offer less bull trout conservation opportunity because there is no minimum size limit to allow most females to reach maturity before being subject to harvest. Consistent with the June 1997 Secretarial Order on Tribal-Federal Trust responsibilities and the Act, we will continue to assess the effects of these regulations and work with the Tribes to assure that the conservation needs of bull trout are met. The State of Washington has closed areas of the lower Quinault River and Queets River watersheds outside of the Quinault Indian Reservation to harvest of "native char" (WDFW 1997a).

In 1993, WDFW increased the catch limit for brook trout in order to reduce interactions with bull trout (WDFW 1995). The increased brook trout catch has the potential to increase the incidental harvest of bull trout due to misidentification by anglers. For example, only 40 percent of Montana anglers surveyed correctly identified bull trout out of six species of salmonids found locally (Mack Long and Sean Whalen, Montana Fish Wildlife and Parks, *in litt.* 1997).

Poaching is still a factor that threatens "native char" in nine drainages within the Coastal-Puget Sound population segment. These are the South Fork Nooksack River, North Fork Nooksack River (above and below the falls), Sauk River and tributaries, North Fork Skykomish River, Chester Morse Reservoir, lower Dungeness River-Gray Wolf River, Hoh River, Goodman Creek, and Morse Creek (WDW, *in litt.* 1992; Mongillo 1993; WDFW 1997a; Service 1998a).

St. Mary-Belly River Population Segment

Historically, the harvest of bull trout in the St. Mary-Belly River DPS was considered "extensive" (Fredenberg 1996). Currently, legal angler harvest in the St. Mary-Belly River DPS occurs only on the Blackfeet Indian Reservation, which has a five fish per day limit with only one fish over 508 mm (20 in.) (Fredenberg 1996).

In 1994, the Blackfeet Tribe reported harvest of at least 19 adult and subadult bull trout in gill nets set for a commercial fishery for lake whitefish

(*Coregonus clupeaformis*) in lower St. Mary Lake (Blackfeet Tribe, *in litt.* 1998). Given the apparent low abundance of adult bull trout in the upper St. Mary Lake subpopulation and restricted migration opportunities over the USBR diversion on lower St. Mary Lake, any harvest of bull trout from this subpopulation represents a threat. Record-keeping by the two commercial fishers is a requirement of the Blackfeet Tribal Fish and Game Commission, but is not strictly enforced. As discussed in Issue 2 in the "Summary of Comments and Recommendations section", a cooperative agreement exists among us, the Blackfeet Tribe, and the Bureau of Reclamation which establishes a partnership focused on the conservation and restoration of native salmonids and habitat in the St. Mary River drainage. We have recently met with the Blackfeet Tribe to address our concerns about bull trout. We will continue to assess the effects of their harvest regulations and, in accordance with the June 1997 Secretarial Order on Tribal-Federal Trust responsibilities and the Act, we will continue work with the Tribe to assure that the conservation needs of bull trout are met. Specifically, the ongoing research carried out under the cooperative agreement is evaluating movement patterns, population status, and genetic structure of the bull trout in the St. Mary River drainage. We will utilize the results as a basis to develop future management recommendations.

C. Disease or Predation

Diseases affecting salmonids are present or likely present in both population segments, but are not thought to be a factor threatening bull trout. Instead, interspecific interactions, including predation, likely negatively affect bull trout where non-native salmonids are introduced (Bond 1992; Ziller 1992; Donald and Alger 1993; Leary *et al.* 1993; MBTSG 1996a; J. Palmisano and V. Kaczynski, Northwest Forestry Resources Council, *in litt.* 1997).

Coastal-Puget Sound Population Segment

Disease is not believed to be a factor in the decline of bull trout in the Coastal-Puget Sound DPS. Outbreaks of the parasite *Dermocystidium salmonis* in the lower Elwha River may negatively affect "native char" in years of high chinook salmon returns (Kevin Amos, WDFW, pers. comm. 1997). The susceptibility of bull trout to the parasite is unknown. There is concern about whirling disease (*Myxobolus cerebralis*), which occurs in wild trout waters of western states, and though this may be a potential threat to bull trout, we do not have specific information on it at this time.

Predation is not considered a primary factor in the decline of Coastal-Puget Sound "native char." The only exception may be largemouth bass (*Micropterus salmoides*) in Cushman Reservoir on the Skokomish River that may potentially affect the bull trout subpopulation (Sam Brenkman, Oregon State University, pers. comm. 1997; WDFW 1997a).

St. Mary-Belly River Population Segment

Disease and predation are not known to be factors affecting the survival of bull trout in the St. Mary-Belly River Basin. Whirling disease has been documented in numerous Missouri River watersheds in central Montana, though not in the Saskatchewan River drainage where the St. Mary-Belly River bull trout subpopulations occur.

D. The Inadequacy of Existing Regulatory Mechanisms

Although varying efforts are underway to assist in conserving bull trout throughout the coterminous United States (*e.g.*, Batt 1996; Light *et al.* 1996; Robert Joslin, USFS, *in litt.* 1997; Allan Thomas, BLM, *in litt.* 1997; Montana Bull Trout Restoration Team 1997), the implementation and enforcement of existing Federal and State laws designed to conserve fishery resources, maintain water quality, and protect aquatic habitat have not been sufficient to prevent past and ongoing habitat degradation leading to bull trout declines and isolation. Statutory mechanisms, including the National Forest Management Act, the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Clean Water Act, the National Environmental Policy Act, Federal Power Act, State Endangered Species Acts and numerous State laws and regulations oversee an array of land and water management activities that affect bull trout and their habitat.

Coastal-Puget Sound Population Segment

In April 1994, the Secretaries of Agriculture and Interior adopted the Northwest Forest Plan for management of late-successional forests within the range of the northern spotted owl (*Strix occidentalis caurina*) (USDA and USDI 1994a). This plan set forth objectives, standards, and guidelines to provide for a functional late-successional and old-growth forest ecosystem. Included in the plan is an aquatic conservation strategy involving riparian reserves, key watersheds, watershed analysis, and habitat restoration. Approximately 35 percent of the total acreage within the Coastal-Puget Sound bull trout population segment are Federal lands subject to Northwest Forest Plan standards and guidelines (U.S. Geological Survey (USGS), *in litt.* 1996). In 1994, an assessment panel determined that the proposed standards and guidelines in the Northwest Forest Plan would result in an 85 percent future likelihood of attaining sufficient aquatic habitat to support well-distributed populations of bull trout on Federal lands (USDA and USDI 1994b). Prior to 1997, most projects developed under the Northwest Forest Plan in this DPS were determined to have "no impact" on bull trout and its habitat. However, these determinations were made prior to the development of specific criteria (Service 1998c) to evaluate the effects of Forest Service activities on bull trout and their habitat. Because existing aquatic habitat conditions are severely degraded in many subbasins, the effects from past land management activities can be expected to continue into the foreseeable future in the form of increased stream temperatures, altered stream flows, sedimentation, and lack of instream cover. These effects are often exacerbated by landslides, road failures, and debris torrents. Many of these aquatic systems will require decades to fully recover (USDA *et al.* 1993). Until then, future habitat losses can be expected due to past activities, potentially resulting in local extirpations, migratory barriers, and reduced reproductive success (Spence *et al.* 1996).

Washington State Forest Practice Rules (WFPR) apply to all State, city, county, and private lands not currently covered under a Habitat Conservation Plan (HCP) or other conservation agreement in Washington. Approximately 45 percent of the Coastal-Puget Sound population segment is held under private ownership and 1.5 percent under city or county ownership. Bull trout and their habitats continue to face threats from ongoing and future timber harvest activities on many of these lands. The WFPR set forth timber harvest regulations for non-Federal and non-Tribal forested lands in the State of Washington. These rules set standards for timber harvest activities in and around riparian areas, in an effort to protect aquatic resources. These riparian management zone widths, as specified by the WFPR, do not ensure protection of the riparian components, because the

minimum buffer widths are likely insufficient to fully protect riparian ecosystems (USDI *et al.* 1996a).

In January 1997, the Washington State Department of Natural Resources (WDNR) developed a multispecies HCP under section 10 of the Act, covering all WDNR-owned lands within the range of the northern spotted owl. The WDNR HCP primarily addresses the conservation needs for old-growth forest-dependent species, such as the northern spotted owl and marbled murrelet (*Brachyramphus marmoratus marmoratus*), while allowing WDNR to meet its trust responsibilities to the State. The HCP also addresses the conservation needs of other terrestrial and aquatic species on WDNR lands. Approximately 10 percent of the Coastal-Puget Sound population segment is in State ownership and is covered by the HCP. The HCP specifically provides Riparian Conservation Strategies designed to maintain the integrity and function of freshwater stream habitat necessary for the health and persistence of aquatic species, especially salmonids. Road maintenance and network planning strategies included in the HCP also play important roles in protecting aquatic habitats, but are often reliant on the Riparian Conservation Strategy stream buffers for complete protection. If fully and properly implemented, the HCP should aid in the restoration and protection of freshwater salmonid habitat on the Olympic Peninsula and the areas on the west slope of the Cascades. There are still "legacy" threats to bull trout subpopulations on State lands even with the HCP in place. For example, the HCP states, "Adverse impacts to salmonid habitat will continue to occur because past forest practices have left a legacy of degraded riparian ecosystems, deforested unstable hillslopes, and a poorly planned and maintained road network" (WDNR 1997). Areas logged in the past will take decades to fully recover. In addition, "Some components of the riparian conservation strategy require on-site management decisions, and adverse impacts to salmonid habitat may occur inadvertently." For example, timber harvesting in the riparian buffer must "maintain or restore salmonid habitat," but, at present, the amount of timber harvesting in riparian ecosystems compatible with high quality salmonid habitat is unknown (WDNR 1997).

In 1992, the WDFW (formerly the WDW) developed a draft bull trout-Dolly Varden management and recovery plan. In 1995, WDFW released a draft EIS for the management plan. The plan establishes a goal of restoring and maintaining the health and diversity of "native char" stocks and their habitats in the State of Washington (WDFW 1995). In 1998, WDFW distributed a revised draft of the bull trout and Dolly Varden management plan to us for review (WDFW 1998b). Although commendable goals and strategies are presented in the new draft plan, specific guidance on how these goals and strategies would be accomplished is not provided. Our review of the plan determined that it does not fully address all elements necessary to conserve and restore bull trout populations (Nancy Gloman, Service, *in litt.* 1998). Because all elements necessary for conservation and restoration of bull trout are not fully addressed and there are uncertainties concerning implementation of the plan, the effect of the plan on future bull trout conservation in Washington is unknown.

Since 1994, WDFW has been developing a Wild Salmonid Policy (WSP) to address management of all native salmonids in the State. In September 1997, WDFW released the final EIS for the WSP. The policy establishes a goal to protect, restore, and enhance the productivity, production, and diversity of wild salmonids and their ecosystems to sustain ceremonial, subsistence, commercial, and recreational fisheries; non-consumptive fish benefits; and related cultural and ecological values well into the future (WDFW 1997b). The WSP, in its current form, may not adequately protect bull trout because the primary focus is restoring wild salmon and steelhead. Although other wild salmonids, including bull trout, are referred to in the document, the proposed policy does not address the unique requirements of bull trout. As a result, proposed habitat and water quality standards (current State surface water quality standards), originally developed with a focus on salmon, may fall short in protection for bull trout. The final EIS is not considered a policy document to direct WDFW. The EIS describes a set of alternatives presented to the Washington State Fish and Wildlife Commission (Commission). The Commission has the final responsibility for taking action on the preferred alternative and recommending policy direction. When implemented, the policy would present guidelines for actions that WDFW must follow, but would not be binding on other State, Tribal, or private entities. The publication of a WSP will likely occur in the near future, but the format and exact content of the document is unknown. Given the uncertainties surrounding implementation of the plan and lack of specificity concerning bull trout, including funding, possible benefits to bull trout can not be evaluated.

Section 305(b) of the 1972 Federal Clean Water Act requires States to identify water bodies biennially that are not expected to meet State surface water quality standards (WDOE 1996). These waters are reported in the section 303(d) list of water quality limited streams. The Washington State 303(d) list (WDOE 1997) reflects the poor condition of lower stream reaches of some systems containing bull trout and Dolly Varden. At least 30 stream reaches within habitat occupied by 13 subpopulations of "native char" are listed on the Washington State proposed 1998 303(d) list of water quality impaired streams (WDOE 1997). Eight of these subpopulations are "depressed," one is "strong," and four are "unknown." Waters included on the 303(d) list due to temperature exceedances are found in areas where the Chehalis River-Grays Harbor, lower Quinault River, Hoh River, lower Elwha River, Nisqually River, lower Puyallup, Green River, Sammamish River-Issaquah Creek, Stillaguamish River, and lower Nooksack River subpopulations occur. We have identified bull trout in two of these subpopulations (Green River and lower Puyallup). The State temperature standards are likely inadequate for bull trout because temperatures in excess of 15° C (59° F) are thought to limit bull trout distribution (Rieman and McIntyre 1993) and the State temperature standard for the highest class of waters is 16° C (61° F).

Subpopulations that occur in waters on the 303(d) list not meeting instream flow standards include the Dungeness River-Gray Wolf River, South Fork-lower North Fork Skokomish River, lower Puyallup River, lower Skagit River, and lower Nooksack River "native char" subpopulations. Bull trout are known to occur in four of these subpopulations (Dungeness River-Gray Wolf River; South Fork-lower North Fork Skokomish River; lower Puyallup; and lower Skagit River). Although no minimum instream flow requirements exist for bull trout, variable stream flows and low winter flows are thought to negatively influence the embryos and alevins (a young fish which has not yet absorbed its yolk sac) of bull trout (Rieman and McIntyre 1993).

The Chehalis River-Grays Harbor and Sammamish River-Issaquah Creek "native char" subpopulations occur in waters on the 303(d) list for not meeting the standards for dissolved oxygen. Although no dissolved oxygen

standards exist for bull trout, poor water quality and highly degraded migratory corridors may hinder or interrupt migration (Spence *et al.* 1996), leading to the further fragmentation of habitat and isolation of bull trout.

Surface waters are assigned to one of five classes under the Water Quality Standards for Surface Waters of the State of Washington (WAC 173–201A–130). These classes are AA (extraordinary), A (excellent), B (good), C (fair) and Lake class. These classes of criteria are established for the following water quality parameters: temperature, fecal coliform, turbidity, dissolved oxygen, and toxic deleterious material concentrations. With the exception of dissolved oxygen, parameters are not to exceed specified maximum levels for each class. Maximum water temperature criteria range from 16° C (60.8° F) (Class AA), 18° C (64.4° F) (Class A), 21° C (69.8° F) (Class B), to 22° C (71.6° F) (Class C). Bull trout streams within the Coastal-Puget Sound population segment have stream segments that fall in classes AA, A, and B. Given the apparent low temperature requirements of bull trout (Rieman and McIntyre 1993), these temperature standards are likely inadequate to protect bull trout spawning, rearing or migration. Segments of the Quinault, Queets, Elwha, Skokomish, Nisqually, White, Green, and Snohomish rivers do not meet existing State standards for their respective classes. It is unknown whether the current standards established for other water quality parameters (fecal coliform, turbidity, dissolved oxygen, toxic deleterious material concentrations) within the various classes, are adequate to protect bull trout. See Factor A for additional discussion of water quality.

St. Mary-Belly River Population Segment

Two USBR structures likely affect bull trout by dewatering stream reaches, acting as passage barriers or exposing fish to entrainment (Service 1998b). We are not aware that the effects of the structures were considered in their construction (1902 and 1921) or operation. Currently, operators attempt to minimize passage and entrainment problems by staging the fall dewatering of the canal and removing boards in the dam during winter. USBR has not evaluated the effectiveness of the operations and has not established formal guidelines to minimize the effects of the structures' operations on bull trout. The draft Montana Bull Trout Restoration Plan (1998) does not address or incorporate recommendations for bull trout conservation found in the St. Mary-Belly River population segment.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade factors affecting the continued existence of bull trout include: previous introductions of non-native species that compete and hybridize with "native char;" subpopulation habitat fragmentation and isolation caused by human activities; and the risk of local extirpations due to natural events such as droughts and floods.

Introductions of non-native species by the Federal government, State fish and game departments and unauthorized private parties across the range of bull trout have resulted in declines in abundance, local extirpations, and hybridization of bull trout (Bond 1992; Howell and Buchanan 1992; Leary *et al.* 1993; Donald and Alger 1993; Pratt and Huston 1993; MBTSG 1995b,d: 1996g; Platts *et al.*1995; John Palmisano and V. Kaczynski, *in litt.* 1997). Non-native species may exacerbate stresses on bull trout from habitat degradation, fragmentation, isolation, and species interactions (Rieman and McIntyre 1993). In some lakes and rivers, introduced species including rainbow trout and kokanee may benefit large adult bull trout by providing supplemental forage (Faler and Bair 1991; Pratt 1992; ODFW, *in litt.* 1993; MBTSG 1996a). However, the same introductions of game fish can negatively affect bull trout due to increased angling and subsequent incidental catch, illegal harvest of bull trout, and competition for space (Rode 1990; Bond 1992; WDW 1992; MBTSG 1995d).

Coastal-Puget Sound Population Segment

Competition and hybridization with introduced brook trout threatens the persistence of some "native char" subpopulations in the Coastal-Puget Sound DPS. The State of Washington has introduced brook trout into several headwater areas occupied by "native char;" however, the distribution of brook trout within many of these areas appears to be limited. Brook trout can affect bull trout even in areas with undisturbed habitats (e.g., National Parks). Brook trout normally have a reproductive advantage (earlier maturation) over resident bull trout, which can lead to species replacement (Leary *et al.* 1993; Thomas 1992). At present, the distribution of 14 "native char" subpopulations partially overlap with brook trout in the upper Sol Duc River, upper Elwha River, lower Dungeness River-Gray Wolf River, upper North Fork Skokomish River, South Fork-lower North Fork Skokomish River, Green River, lower Puyallup (Carbon River), Snohomish River, Skykomish River, Gorge Reservoir, Diablo Reservoir, Ross Reservoir, Lower Skagit River, upper Middle Fork Nooksack River, and Canyon Creek (Reed Glesne, North Cascades National Park, *in litt.* 1993; Mongillo and Hallock 1993; John Meyer, Olympic National Park, pers. comm. 1995; Morrill and McHenry 1995; S. Brenkman, pers. comm. 1997; Brady Green, MBSNF, pers. comm. 1997).

"Native char" subpopulations that have become geographically isolated may no longer have access to migratory corridors. First- and second-order streams in steep headwaters tend to be hydrologically and geomorphically more unstable than large, low-gradient streams. Thus, salmonids are being restricted to habitats where the likelihood of extirpation because of random environmental events is greatest" (Spence *et al.* 1996). "Native char" subpopulations that are likely to be negatively affected by natural events as a result of isolation are Cushman Reservoir, South Fork-lower North Fork Skokomish River, Gorge Reservoir, Diablo Reservoir, Ross Reservoir, upper Middle Fork Nooksack River, upper Quinault River, upper Sol Duc River, upper Dungeness River, and Chester Morse Reservoir (Service 1998a). Of these 10 "native char" subpopulations, we have examined species composition in seven and bull trout have been confirmed in five (Cushman Reservoir, South Fork-lower North Fork Skokomish River, upper Quinault River, Chester Morse Reservoir, and upper Middle Fork Nooksack River), of which three are "depressed" (Service 1998a).

St. Mary-Belly Population Segment

Non-native species are pervasive throughout the St. Mary and Belly rivers (Fitch 1994; Fredenberg 1996; Clayton 1997). Brook, brown, and rainbow trout have been widely introduced in the area. We are not aware of any studies conducted in the DPS evaluating the effects of introduced non-native fishes on bull trout. However, because brook trout occur in the four bull trout subpopulations, competition and hybridization are threats in the St. Mary and Belly rivers (Service 1998b), especially on resident bull trout (R. Wagner, pers. comm. 1998).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Coastal-Puget Sound and St. Mary-Belly River

population segments of bull trout in determining this rule. Based on this evaluation, we have determined to list the bull trout as threatened in both population segments as summarized below.

Coastal-Puget Sound Population Segment

Bull trout and "native char" in the Coastal-Puget Sound population segment have declined in abundance and distribution within many individual river basins. Bull trout and "native char" currently occur as 34 separate subpopulations, which indicates the level of habitat fragmentation and geographic isolation. Seven subpopulations are isolated above dams or other diversion structures, with at least 17 dams proposed in streams inhabited by other bull trout or "native char" subpopulations. Bull trout and "native char" are threatened by the combined effects of habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, harvest, and introduced non-native species. Although several subpopulations lie completely or partially within National Parks or Wilderness Areas, these subpopulations are threatened by the presence of brook trout, or from habitat degradation that is occurring outside of these restricted land use areas. Based on the best available information, we have concluded that at least 10 subpopulations are currently "depressed," one subpopulation is "strong," and the status of the remaining 23 subpopulations is "unknown." Some subpopulations in the north Puget Sound have relatively greater abundance compared to other areas of the Coastal-Puget Sound population segment. However, we remain concerned over the reported declines in abundance in other north Puget Sound subpopulations, and the documented threats present in these subpopulation basins. Available anecdotal information indicates additional subpopulations within the population segment have declined in abundance.

St. Mary-Belly River Population Segment

The St. Mary-Belly population segment contains the only bull trout found east of the Continental Divide in the coterminous United States. We identified four subpopulations isolated primarily by irrigation dams and diversions. Recent surveys indicate that bull trout occur in relatively low abundance, with three subpopulations "depressed" and the status of one subpopulation "unknown." Migratory bull trout are known to occur in three subpopulations, but these subpopulations are isolated by irrigation dams and unscreened diversions. We consider the dams and unscreened diversions a major factor affecting bull trout in the population segment by inhibiting fish movement and possibly entrainment into diversion channels and habitat alterations associated with dewatering. There are no formal guidelines to minimize the effects of the operation of the structures on bull trout. Bull trout are also threatened by negative interactions with non-native brook trout that occur with the four subpopulations.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific area within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species.

We find that the designation of critical habitat is not determinable for bull trout in the coterminous United States, based on the best available information. When a "not determinable" finding is made, we must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent. We reached a "not determinable" critical habitat finding in the proposed rule, and we specifically requested comments on this issue. While we received a number of comments advocating critical habitat designation, none of these comments provided information that added to our ability to determine critical habitat. Additionally, we did not obtain any new information regarding specific physical and biological features essential for bull trout during the open comment period, including the five public hearings. The biological needs of bull trout is not sufficiently well known to permit identification of areas as critical habitat. Insufficient information is available on the number of individuals or spawning reaches required to support viable subpopulations throughout each of the distinct population segments. In addition, we have not identified the extent of habitat required and all specific management measures needed for recovery of this fish. This information is considered essential for determining critical habitat for these population segments. In addition, within the Coastal-Puget Sound bull trout are sympatric with Dolly Varden. These two species are virtually impossible to visually differentiate and genetic and morphological-meristic analyses to determine the presence or absence of bull trout and Dolly Varden have only been conducted on 15 of the 35 "native char" subpopulations. The presence of bull trout in the remaining 20 subpopulations in the Coastal-Puget Sound along with the information noted above is considered essential for determining critical habitat for these population segments. Therefore, we find that designation of critical habitat for bull trout in the coterminous United States is not determinable at this time. We will protect bull trout habitat through the recovery process and through section 7 consultations to determine whether Federal actions are likely to jeopardize the continued existence of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by

Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The Coastal-Puget Sound and St. Mary-Belly River population segments occur on lands administered by the USFS, NPS, and BLM; various State- and privately-owned properties in Washington (Coastal-Puget Sound population segment) and Montana (St. Mary-Belly River population segment); Blackfeet Tribal lands in Montana, and various Tribal lands in Washington. Federal agency actions that may require consultation as described in the preceding paragraph include COE involvement in projects such as the construction of roads and bridges, and the permitting of wetland filling and dredging projects subject to section 404 of the Clean Water Act; Federal Energy Regulatory Commission licensed hydropower projects authorized under the Federal Power Act; USFS and BLM timber, recreation, mining, and grazing management activities; Environmental Protection Agency authorized discharges under the National Pollutant Discharge System of the Clean Water Act; and U.S. Housing and Urban Development projects.

On January 27, 1998, an interagency memorandum between the USFS, BLM and us outlined a process for bull trout section 7 conference and consultation in recognition of the possibility of an impending listing of bull trout in the Klamath River and Columbia River basins. The process considers both programmatic actions (*e.g.*, land management plans) and site-specific actions (*e.g.*, timber sales and livestock grazing allotments) and incorporates conference and consultation at the watershed level. The process uses a matrix (Service 1998c) to determine the environmental baseline and the effects of actions on the environmental baseline of bull trout. The USFS and BLM provided a Biological Assessment (BA) to us on June 15, 1998, which evaluated the effects of implementing the land management plans, as amended by PACFISH and INFISH strategy, in the Klamath River and Columbia River basins. PACFISH is the Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California, developed by the USFS and BLM. PACFISH is intended to be an ecosystem-based, aquatic habitat and riparian-area management strategy for Pacific salmon, steelhead, and sea-run cutthroat trout habitat on lands administered by the two agencies that are outside the area subject to implementation of the NFP. INFISH is the Inland Native Fish Strategy, which was developed by the USFS to provide an interim strategy for inland native fish in eastern Oregon and Washington, Idaho, western Montana, and portions of Nevada. The BA concluded the plans, as amended, would not jeopardize the Klamath River and Columbia River DPSs of bull trout. In addition, in a June 19, 1998, letter, the land management agencies provided commitments in implementing the PACFISH and INFISH aquatic conservation strategies to ensure the USFS and BLM management plans and associated actions would conserve federally listed bull trout. The commitments addressed: restoration and improvement; standards and guidelines of PACFISH and INFISH; key and priority watershed networks; watershed analysis; monitoring; long-term conservation and recovery; and section 7 consultation at the watershed level. The BA and additional commitments were part of the materials we evaluated in developing a biological opinion on the management plans. The non-jeopardy biological opinion, issued August 14, 1998, endorsed implementation of those commitments in the Klamath River and Columbia River basins, in addition to identifying further actions to help ensure conservation of bull trout in those DPSs. The NFP applies to Federal lands in the Coastal-Puget Sound population segment. Although we have not finalized a programmatic biological opinion, programmatic consultations with three National Forests have been re-initiated, including conferencing on bull trout with the USFS regional office for the Olympic, Mount Baker-Snoqualmie, and Gifford Pinchot National Forests.

The Act and implementing regulations found at 50 CFR 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (which includes to harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies. In this case, a special rule tailored to this particular species takes the place of the regulations in 50 CFR 17.31; the special rule, though, incorporates most requirements of the general regulations, although with additional exceptions.

We may issue permits under section 10(a)(1) of the Act to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.32 for threatened species. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act. For copies of the regulations concerning listed plants and animals, and general inquiries regarding prohibitions and permits, contact the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species list, listing those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. We believe the following actions would not be likely to result in a violation of section 9, provided the activities are carried out in accordance with all existing regulations and permit requirements:

(1) Actions that may affect bull trout and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by us pursuant to section 7 of the Act;

(2) Possession of bull trout caught legally in accordance with authorized State, NPS, and Tribal fishing regulations (see "Special Rule" section);

(3) State, local and other activities approved by us under section 4(d), section 6(c)(1), or section 10(a)(1) of the Act;

(4) The planting of native vegetation within riparian areas, using hand tools or mechanical auger. This does not include any site preparation that involves the removal of native vegetation (such as deciduous trees and shrubs) or goes beyond that necessary to plant individual trees, shrubs, etc.;

(5) The installation of fences to exclude livestock impacts to the riparian area and stream channel. The installation of new off-channel livestock watering facilities where livestock use streams for watering, and the operation and maintenance of existing off-channel livestock watering facilities. These watering facilities must consist of low volume pumping, gravity feed or well systems, and in-water intakes must be screened consistent with National Marine Fisheries Service (NMFS) Juvenile Fish Screen Criteria For Pump Intakes. This does not include the potential impacts associated with the grazing activity itself or negative effects attributable to depleting stream flow due to water withdrawal;

(6) The placement of human access barriers, such as gates, fences, boulders, logs, vegetative buffers, and signs to limit use- and disturbance-associated impacts. These impacts include timber theft, disturbance to wildlife, poaching, illegal dumping of waste, erosion of soils, and sedimentation of aquatic habitats, particularly in sensitive areas such as riparian habitats or geologically unstable zones. This does not include road maintenance or the potential impacts associated with the road itself;

(7) The current operation and maintenance of fish screens on various water facilities that meet the current NMFS Juvenile Fish Screen Criteria and Juvenile Fish Screen Criteria For Pump Intakes. This does not include the use of traps or other collection devices at screen installations, operation of the diversion structure, or negative effects attributable to depleting stream flow due to water diversion;

(8) The installation, operation, and maintenance of screens where the existing canal or ditch is located off the main stream channel. The canal or ditch must be dewatered prior to screen and bypass installation and prior to fish entering the canal or ditch. Installed screens and bypass structures must meet the current NMFS Juvenile Fish Screen Criteria. Bypass must be accomplished through free (volitional) access, with adequate velocities, construction materials and stream re-entry conditions that will not result in harm or death to fish. This does not include the use of traps or other collection devices at screen installations, placement or operation of the diversion structure, or negative effects attributable to depleting stream flow due to water diversion;

(9) The general maintenance of existing structures (such as homes, apartments, commercial buildings) which may be located in close proximity to a stream corridor, but outside of the stream channel. This does not include potential impacts associated with sediment or chemical releases that may adversely affect bull trout or their habitat, nor does this include those activities that may degrade existing riparian areas or alter streambanks (such as removal of streamside vegetation and streambank stabilization); and

(10) The lawful use of existing State, county, city, and private roads. This does not include road maintenance and the potential impacts associated with the road itself that may destroy or alter bull trout habitat (such as grading of unimproved roads, stormwater and contaminant runoff from roads, failing road culverts, and road culverts that block fish migration), unless authorized by us through section 7 or 10 of the Act.

The following actions likely would be considered a violation of section 9:

(1) Take of bull trout without a permit or other incidental take authorization from us. Take includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State, NPS, and Tribal fish and wildlife conservation laws and regulations;

(2) To possess, sell, deliver, carry, transport, or ship illegally taken bull trout;

(3) Unauthorized interstate and foreign commerce (commerce across State and international boundaries) and import/export of bull trout (as discussed in the prohibition discussion earlier in this section);

(4) Intentional introduction of non-native fish species that compete or hybridize with, or prey on bull trout;

(5) Destruction or alteration of bull trout habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, grading of unimproved roads, stormwater and contaminant runoff from roads, failing road culverts, and road culverts that block fish migration or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, turbidity, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting bull trout that result in death or injury of the species; and

(7) Destruction or alteration of riparian or lakeshore habitat and adjoining uplands of waters supporting bull trout by timber harvest, grazing, mining, hydropower development, road construction or other developmental activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning.

We will review other activities not identified above on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. We do not consider these lists to be exhaustive and provide them as information to the public.

Direct your questions regarding whether specific activities may constitute a violation of section 9 to the Supervisor, Western Washington Office, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503 (telephone 360/753–9440; facsimile 360/753–9518) for the Coastal-Puget Sound population segment; the Montana Field Office, 100 N. Park, Suite 320 Helena, Montana 59601 (telephone 406/449–5225; facsimile 406/449–5339) for the St. Mary-Belly River population segment.

Special Rule

Section 4(d) of the Act provides that when a species is listed as threatened, we are to issue such regulations as are necessary and advisable to provide for the conservation of the species. We have generally done so by adopting regulations (50 CFR 17.31) applying with respect to threatened species the same prohibitions that under the Act apply with respect to endangered species. Those prohibitions generally make it illegal to import, export, take, possess, ship in interstate commerce, or sell a member of the species. The "take" that is prohibited includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting the wildlife, or attempting to do any of those things. However, we may also issue a special rule tailored to

a certain threatened species, establishing with respect to it only those particular prohibitions that are necessary and advisable for its conservation. In that case, the general prohibitions in 50 CFR 17.31 do not apply to that species, and the special rule contains all the prohibitions and exceptions that do apply. Typically, such special rules incorporate all the prohibitions contained in 50 CFR 17.31, with additional exceptions for certain forms of take that we have determined are not necessary and advisable to prohibit in order to provide for the conservation of that particular species.

The special rule in this final determination for bull trout will apply to bull trout wherever found in the coterminous lower 48 States, except in the Jarbidge River basin in Nevada and Idaho. The principal effect of the special rule is to allow take in accordance with State, NPS, and Native American Tribal permitted fishing activities. Since we are finalizing the listing of bull trout as a coterminous listing, we are essentially adding the special rule we had proposed for the Coastal-Puget Sound and St. Mary-Belly River population segments to the existing special rule for the Klamath and Columbia River population segments published on June 10, 1998 (63 FR 31647). The resultant special rule is effectively identical to the proposed rule for the Coastal-Puget Sound and St. Mary-Belly population segments and does not change the existing special rule for the Klamath and Columbia River population segments. The special rule for the Jarbidge River population segment is effectively identical to the special rule for the other four population segments except that it is only valid until April 9, 2001, and thus, will remain separate.

We believe that statewide angling regulations have become more restrictive in an attempt to protect bull trout in Washington, Idaho, Oregon, California, and Montana, and are adequate to provide continued conservation benefits for bull trout in the Klamath River, Columbia River, Coastal-Puget Sound and the St. Mary-Belly River population segments. The State of Washington closed fishing in 1994 for "native char" in most waters within the Coastal-Puget Sound population. Legal angler harvest in the St. Mary-Belly River DPS in Montana occurs only on the Blackfeet Indian Reservation. Legal harvest of bull trout in the Klamath River basin was eliminated in 1992 when the Oregon Department of Fish and Wildlife imposed a fishing closure. State management agencies in Idaho, Oregon, Montana, and Washington have suspended harvest of bull trout in the Columbia River basin, except in Lake Billy Chinook (Oregon) and Swan Lake (Montana). Since the States and many Tribal governments have demonstrated a willingness to adjust their regulations to reduce fishing pressures where needed, we do not believe it is necessary and advisable for the conservation of the species to prohibit take through regulated fishing of subpopulations of bull trout that are exhibiting stable or increasing numbers of individuals and where habitat conditions are not negatively depressing local fish stocks. Using discretion when applying 4(d) exemptions can foster incentives for States and Tribes to expedite conservation efforts by providing rewards for restoring stocks and allowing regulated harvest prior to delisting. For example, Washington has only two systems in the Coastal-Puget Sound population segment that are open for bull trout fishing. These systems have a two fish limit with a minimum 508 mm (20 in.) size limit to allow females to spawn at least once. Also, as long as these systems are closely monitored, we are gaining valuable information about the life history, relative abundance, and distribution of bull trout, which will be important for working towards the recovery of the species. We intend to continue to work with the States and Tribes in assessing whether current fishing regulations are adequate to protect bull trout, and in developing management plans and agreements with the objective of recovery and eventual delisting of the species.

In accordance with the June 1997 Secretarial Order on Federal-Tribal trust responsibilities and the Act, we will work with Tribal governments that manage bull trout streams to restore ecosystems and enhance Tribal management plans affecting the species. We believe that the special rule is consistent with the Secretarial Order designed to enhance Native American participation under the Act and will allow more efficient management of the species on Tribal lands.

Elsewhere in today's **Federal Register** we have published a Notice of Intent which outlines our intent to develop, through section 4(d) of the Act, another special rule for bull trout that would provide conservation benefits to the species, while ensuring the future continuation of land management actions. The special rule would address two categories of activities affecting bull trout: (1) Habitat restoration; and (2) regulations that govern land and water management activities. Please refer to the notice for further information and if you wish to provide comments to us.

Similarity of Appearance

Section 4(e) of the Act authorizes the listing of a non-threatened or endangered species based on similarity of appearance to a threatened or endangered species if—(A) the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between the listed and unlisted species; (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (C) such treatment will substantially facilitate the enforcement and further the policy of the Act.

Within the Coastal-Puget Sound population segment, bull trout occur sympatrically within the range of the Dolly Varden. These two species so closely resemble one another in external appearance that it is virtually impossible for the general public to visually differentiate the two. Currently, WDFW manages bull trout and Dolly Varden together as "native char." Fishing for bull trout and Dolly Varden is open in four subpopulations within the Coastal-Puget Sound population segment, two under WDFW regulations, and two under Native American Tribal regulations. These "native char" fisheries may adversely affect these subpopulations of bull trout. However, under current harvest management, there is no evidence that the specific harvest for Dolly Varden creates an additional threat to bull trout within this population segment. Therefore, a similarity of appearance rule is not being issued for Dolly Varden at this time. However, if bull trout and Dolly Varden are managed in Washington State as separate species in the future, we may consider, at that time, the merits of proposing Dolly Varden under the similarity of appearance provisions of the Act.

Section 7 Consultation

Although this rule consolidates the five bull trout DPSs into one listed taxon, based on conformance with the DPS policy for purposes of consultation under section 7 of the Act, we intend to retain recognition of each DPS in light of available scientific information relating to their uniqueness and significance. Under this approach, these DPSs will be treated as interim recovery units with respect to application of the jeopardy standard until an approved recovery plan is developed. Formal establishment of bull trout recovery

units will occur during the recovery planning process.

Paperwork Reduction Act for the Listing

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

Required Determinations for the Special Rule

Regulatory Planning and Review, Regulatory Flexibility Act, and Small Business Regulatory Enforcement Fairness Act

The special rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

This special rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. Therefore, a cost-benefit and full economic analysis is not required.

Section 4(d) of the Act provides authority for us to issue regulations necessary to provide for the conservation of species listed as threatened. We find that State, NPS, and Native American Tribal angling regulations have become more restrictive in an attempt to protect bull trout in the coterminous United States. We believe that existing angling regulations developed independently by the States, National Park Service, and Native American Tribes are adequate to provide continued conservation benefits for the bull trout in the coterminous United States. As a result, the special rule will allow angling to take place in the river systems within the Klamath River, Columbia River, Coastal-Puget Sound, and St. Mary-Belly River DPSs under existing State regulations. The Jarbidge River DPS has a separate special rule that was made final on April 8, 1999 (64 FR 17110), and continues to remain in effect for that DPS. The economic effects discussion addresses only the economic benefits that will accrue to the anglers who can continue to fish in river systems within the Klamath River, Columbia River, Coastal-Puget Sound and St. Mary-Belly River population segments. Although the special rule for the Klamath River and Columbia River DPSs was finalized on June 10, 1998 (63 FR 31647), and continues to remain in effect, they are included in this "Required Determinations for the Special Rule" section since the special rule applies to all four DPSs (see "Special Rule" section for further discussion of this issue).

This special rule will allow continued angling opportunities in Washington, Idaho, Oregon, California, and Montana under existing State, NPS, and Native American Tribal regulations. Data on the number of days of trout fishing under new State regulations are available by State from the 1996 National Survey of Fishing, Hunting, and Wildlife Associated Recreation. These data pertain to total trout fishing in each State. In order to develop an estimate of angling days preserved by this rule, we used the proportion of the river miles in this rule to total river miles of coldwater running rivers and streams in each State to estimate the portion of total trout angling days affected by this rule. Because of the lack of definitive data, we decided to do a worst case analysis. We analyzed the economic loss in angling satisfaction, measured as consumer surplus, if all trout fishing were prohibited in the Klamath, Columbia, St. Mary-Belly rivers and the Coastal-Puget Sound. Since there are substitute sites in each State where fishing is available, this measure of consumer surplus is a conservative estimate and would be a maximum estimate. The total estimated angling days affected is 266,490 annually. We used a consumer surplus of $19.35 (1999$) per day for trout fishing to get an estimated benefit of slightly over $5 million annually. If the assumption that the affected rivers receive an average amount of angling pressure does not hold true, and the angling pressure is twice the average for the affected rivers, then the annual consumer surplus will be in the range of $10 million annually. Consequently, this rule will have a small measurable economic benefit on the United States economy, and even in the event that fishing pressure is twice the State average in the affected rivers, this rule will not have an annual effect of $100 million or more for a significant rule-making action.

This special rule will not create inconsistencies with other agencies' actions.

The special rule allows for continued angling opportunities in accordance with existing State, NPS, and Native American Tribal regulations.

This special rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This special rule does not affect entitlement programs.

This special rule will not raise novel legal or policy issues. There is no indication that allowing for continued angling opportunities in accordance with existing State, NPS, and Native American Tribal regulations would raise legal, policy, or any other issues.

The Department of the Interior certifies that the final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. We recognize that some affected entities are considered "small" in accordance with the Regulatory Flexibility Act, however, no individual small industry within the United States will be significantly affected by allowing for continued angling opportunities in accordance with existing State, NPS, and Tribal regulations.

The special rule is not a major rule under 5 U.S.C. 801 *et seq.*, the Small Business Regulatory Enforcement Fairness Act.

This special rule does not have an annual effect on the economy of $100 million or more. Trout fishing in the Klamath River, Columbia River, the Coastal-Puget Sound, and the St. Mary-Belly River generates expenditures by local anglers of an estimated $8.7 million per year. Consequently, the maximum benefit of this rule for local sales of equipment and supplies is no more than $8.7 million per year and most likely smaller because all fishing would not cease in the area even if the Klamath River, Columbia River, the Coastal-Puget Sound, and the St. Mary-Belly River were closed to trout fishing. The availability of numerous substitute sites would keep anglers spending at a level probably close to past levels.

This special rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This special rule allows the continuation of fishing in the Klamath River, Columbia River, Coastal-Puget Sound and St. Mary-Belly River population segments and, therefore, allows for the usual sale of equipment and supplies by local businesses. This special rule will not affect the supply or demand for angling opportunities in Washington, Idaho, Oregon, California, and Montana, and

therefore, should not affect prices for fishing equipment and supplies, or the retailers that sell equipment. Trout fishing in the affected rivers accounts for less than 2 percent of the available trout fishing in the States.

This special rule does not have significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises. Because this rule allows for the continuation of spending of a small number of affected anglers, approximately $8.6 million for trout fishing, there will be no measurable economic effect on the freshwater sportfish industry which has annual sales of equipment and travel expenditures of $24.5 billion nationwide.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

This special rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required; and

This special rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings Implication

We have determined that this special rule has no potential takings of private property implications as defined by Executive Order 12630. The special rule would not restrict, limit, or affect property rights protected by the Constitution.

Federalism

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

Civil Justice Reform

The Department of the Interior has determined that this special rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

National Environmental Policy Act

We have determined that an Environmental Assessment and Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Snake River Basin Office (see **ADDRESSES** section).

Author(s)

The primary authors of this final rule are Jeffrey Chan, Western Washington Fishery Resource Office, Olympia, Washington; Wade Fredenberg, Creston Fish and Wildlife Center, Kalispell, Montana; Samuel Lohr, Snake River Basin Office, Boise, Idaho; and Shelley Spalding, Western Washington State Office, Olympia, Washington.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by revising the entries for "trout, bull" under FISHES, in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Trout, bull	*Salvelinus confluentus* ..	U.S.A. (AK, Pacific NW into CA, ID, NV, MT), Canada (NW Territories).	U.S.A, coterminous (lower 48 states).	T	637, 659, 670	NA	17.44(w) 17.44(x)
*	*	*	*	*	*	*	

3. Amend § 17.44 by revising paragraph (w) to read as follows:

§ 17.44 Special rules—fishes.

* * * * * *

(w) What species are covered by this special rule? Bull trout (*Salvelinus confluentus*), wherever found in the coterminous lower 48 States, except in the Jarbidge River Basin in Nevada and Idaho (see 50 CFR 17.44(x)).

(1) What activities do we prohibit? Except as noted in paragraph (w)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 shall apply to the bull trout in the coterminous United States as defined in paragraph (w) of this section.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of this section or in violation of applicable State, National Park Service, and Native American Tribal fish and conservation laws and regulations.

(ii) It is unlawful for any person to attempt to commit, solicit another to

commit, or cause to be committed, any offense listed in this special rule.

(2) What activities do we allow? In the following instances you may take this species in accordance with applicable State, National Park Service, and Native American Tribal fish and wildlife conservation laws and regulations, as constituted in all respects relevant to protection of bull trout in effect on November 1, 1999:

(i) Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) Fishing activities authorized under State, National Park Service, or Native American Tribal laws and regulations;

(3) How does this rule relate to State protective regulations? Any violation of applicable State, National Park Service, or Native American Tribal fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

* * * * *

Dated: October 14, 1999.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–28295 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF71

Endangered and Threatened Wildlife and Plants; Notice of Intent to Prepare a Proposed Special Rule Pursuant to Section 4(d) of the Endangered Species Act for the Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are considering proposing additional special regulations under the authority of section 4(d) of the Endangered Species Act (Act) of 1973, as amended, that would promote the conservation of bull trout (*Salvelinus confluentus*). The Act prohibits take of species that are listed as endangered, except where authorized by permit. We have extended the Act's take prohibition to species that are listed as threatened under the authority of the Act. For some threatened species, we have issued special rules that exempt from the take prohibition certain activities that are consistent with conservation of the species. Published elsewhere in today's **Federal Register** is the final rule listing bull trout within the coterminous United States as threatened. In the final listing rule we have included a special rule that exempts from the take prohibition fishing activities authorized under State, National Park Service, or Native American Tribal laws and regulations and take for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

We are considering amending this special rule to also exempt two categories of activities affecting bull trout: Habitat restoration; and other land and water management activities that are governed by enforceable regulations that provide substantial protection for bull trout.

Habitat restoration activities designed to enhance riparian and stream habitat conditions for salmonids can provide major contributions to the conservation of bull trout. However, some of these activities may cause short-term impacts, such as sediment entering streams from culvert removal or bank restoration, that result in take of bull trout. We are considering amending the special rule to exempt such activities, both Federal and non-Federal, from the take prohibitions of the Act, where the activities meet criteria for minimizing adverse impacts to bull trout. We would require some, as yet to be defined, minimal annual level of reporting to help us monitor restoration efforts and accomplishments.

We are also considering amending the special rule to exempt other land and water management activities from the take prohibitions of the Act when they are conducted in accordance with enforceable regulations that provide substantial protection for bull trout. Activities considered for coverage under the amended special rule would be non-Federal activities, and would be implemented under locally prepared, Service-approved, Conservation Enhancement Plans (CEPs). Activities that would be exempted under a special rule could involve some level of impact, but would have to fall within an overall framework that would contribute to the conservation of the species.

DATES: Send your comments to reach us on or before December 16, 1999.

ADDRESSES: You should send your comments to the U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive, Lacey, Washington 98503.

FOR FURTHER INFORMATION CONTACT: Gerry Jackson, Supervisor, Western Washington Office, (see **ADDRESSES** section) (telephone 360/753–9440; facsimile 360/753–9405).

SUPPLEMENTARY INFORMATION:

Background

Recent listings of several salmon species in Oregon and Washington have raised concern for the status of salmon and related fish species such as bull trout (*Salvelinus confluentus*) in the Northwest. State agencies and local governments have been working with us, the National Marine Fisheries Service, and other Federal agencies to develop strategies to protect and recover salmon species in the Pacific Northwest. Some of these efforts include the development of conservation strategies for bull trout.

We are responding to the need to conserve the bull trout throughout its range by promoting activities that contribute to the conservation of species. Restoration activities that clearly enhance the quantity and quality of habitat required by bull trout can provide major contributions toward its conservation. However, restoration activities that cause short-term sedimentation of a stream, such as culvert removal or bank restoration, may result in take of bull trout. An amended special rule would exempt such activities from the take prohibitions of the Act where the activities meet criteria for minimizing adverse impacts and provide conservation benefits to bull trout. We would require some, as yet to be defined, minimal annual level of reporting to help us monitor restoration efforts and accomplishments.

We see an opportunity for State agencies and county and local governments (collectively referred to as the Jurisdictions) to provide substantial protection for bull trout. Jurisdictions would be able gain exemptions from the Act's prohibitions against incidental take for thousands of their citizens, including small landowners. Jurisdictions could utilize their authorities to implement existing regulations, or promulgate new regulations that comply with the provisions of the Act. The Jurisdictions would enforce those regulations covering a variety of land and water management activities. A few of these existing authorities include growth management acts, shoreline management acts, State environmental policy acts, timber harvest regulations, and instream construction and water discharge permits. The benefit of an amended 4(d) rule to these Jurisdictions is that it provides an expedient process for obtaining generic approval in advance of ongoing and proposed actions requiring compliance with the take prohibitions of the Act. The amended 4(d) rule would provide take coverage and cost savings to thousands of small land owners, and others, who are conducting activities that may take bull trout. Once established, it is anticipated that Jurisdictions could obtain generic Service approval for State and local regulated activities faster than through the section 10(a)(1)(B) process for habitat conservation plans (HCPs). Section 10(a)(1)(B) requires applicants to prepare a HCP, and some applicants must also prepare either an environmental assessment or environmental impact statement to comply with the National Environmental Policy Act (NEPA). This can be costly and time consuming, thus an amended 4(d) rule could be a preferred alternative for many individuals whose activities may incidentally take bull trout. Additionally, a Jurisdiction may already be undertaking efforts to protect salmon and bull trout habitat (see examples below), that may qualify as a CEP without additional efforts on its part. This would prove to be a more expedient and cost-effective means of obtaining compliance with the Act than

the 10(a)(1)(B) permitting process. All benefits to the bull trout derived from conservation contributions as a result of an amended 4(d) rule would expedite its recovery and advance the time at which the protective measures of the Act are no longer required.

Jurisdictions would develop CEPs to be approved by us for coverage under the special rule. Regulations or other protective measures may be incorporated in whole or in part in a CEP. In general, the CEPs would address baseline conditions and current and projected impacts to bull trout within the vicinity of activities to be covered under the special rule. The Jurisdictions would identify future actions and protective measures to be undertaken to protect or enhance bull trout populations. We would require the Jurisdictions to ensure that their CEPs have a high level of certainty of implementation, and that they include a comprehensive monitoring program and an adaptive management component with the flexibility to respond to new scientific knowledge. We would authorize activities under the CEP as long as the provisions of the special rule are met and the protective measures undertaken contribute to the long-term survival and recovery of the bull trout in the wild.

Currently, the Jurisdictions have three options for compliance with the Act—the avoidance of all take, incidental take authorization under section 7, or incidental take authorization through an HCP under section 10(a)(1)(B) of the Act. We envision that an amended special rule for bull trout would provide a fourth option for the Jurisdictions to ensure that their land and water management activities comply with the Act. The Jurisdictions could attain compliance with the Act through the adoption of approved CEPs for the bull trout. Once established, it is anticipated that this regulatory process would proceed faster in obtaining our approval for State and local regulated activities than the section 10(a)(1)(B) process for HCPs. Although a 4(d) rule offers a single species approach for compliance under the Act, approved activities may provide the basis for a broader, more comprehensive multi-species HCP for listed and unlisted species. Therefore, a 4(d) rule may, in some instances, serve as a bridge to producing a comprehensive, watershed-based HCP.

As an example of a Jurisdiction benefitting from an amended 4(d) rule, the Washington State Forest Practices Board is currently developing regulations for State and private timber harvest that would also protect salmon and buil trout habitat along streams. Once the Board develops and adopts these regulations, they may be presented to us in the form of a CEP for coverage under the 4(d) rule. Non-Federal timber harvest activities would be in compliance with the Act as long as the activities approved by us under the CEP are conducted in accordance with State Forest Practices Regulations.

As another example of a potential application of the 4(d) rulemaking process and the benefits derived from an amended 4(d) rule, the Tri-Counties of King, Pierce and Snohomish, in Washington (including the cities and municipalities within these counties) have formed a coalition to develop conservation strategies for listed salmonids, including bull trout. These conservation strategies will address critical area ordinances, herbicide and pesticide use, shoreline management, storm water management, road maintenance, and watershed planning. Once developed, these strategies would be implemented through the use of existing authorities, such as the State Environmental Policy Act, Shoreline Protection Act and the Growth Management Act, and through administrative permitting authorities, including grading and building permits, tree permits and other permits. Here again, an amended 4(d) rule governing specific activities that, while part of an overall protective framework, may result in take of bull trout would provide compliance under the Act when conducted under an approved CEP that is regulated and enforced by the Jurisdictions.

We would require CEPs to appropriately address relevant effects of activities under the control of the non-Federal landowner or Jurisdiction as they relate to the following threats identified in the final listing rule for the bull trout:

(1) Introduction of non-native fish species that compete with, hybridize with, or prey on bull trout;

(2) Dredging, channelization, diversion, instream vehicle operation or rock removal, or other activities that destroy or significantly alter cover, channel stability, substrate composition or temperature in areas used by the bull trout for foraging, cover, migration or spawning;

(3) Discharging or dumping toxic chemicals, silt, or other pollutants into waters or onto land in a manner that would allow these substances to enter into waters supporting bull trout;

(4) Recreational activities, timber harvest, grazing, mining, hydropower development, or other developmental activities that destroy or significantly alter cover, channel stability, substrate composition, or temperature in areas used by the bull trout for foraging, cover, migration or spawning;

(5) Instream or shoreline recreational and commercial activities that significantly disrupt behavioral patterns and harass migrating or spawning bull trout.

We would announce in the **Federal Register** and solicit public comment on CEPs prior to any approval. We will comply with NEPA in implementing the provisions of the proposed special rule. Since some States require a NEPA like review, a CEP may have an associated environmental review document already prepared by the Jurisdiction. In these cases, we will consider this information in our NEPA review; however, a review from a national perspective rather than a local review may be needed to fully comply with the requirements of NEPA.

We request comments on whether we should propose special regulations that would provide the opportunity for the Jurisdictions to attain compliance under the Act through their authorities to regulate and enforce land and water management activities. In addition, we request specific information and comment from Federal and State agencies, local municipalities and private individuals or organizations on the following:

Habitat Restoration Activities

(1) The types of habitat restoration activities we should address under an amendment to the special rule;

(2) The standards or criteria for habitat restoration activities that must be met in order to be exempted from take prohibitions; and

(3) Comments on the nature and scope of minimal monitoring and reporting programs for habitat restoration activities.

Regulated Activities

(1) The types of regulated activities we should address in an amendment to the special rule;

(2) The standards or criteria for regulated activities that must be met in order to be exempted from the take prohibitions;

(3) The appropriate components of a CEP or similar plan;

(4) Appropriate monitoring and reporting programs for regulated activities; and

(5) Information on how habitat for the bull trout should be identified and how it should be protected or enhanced.

Dated: September 1, 1999.

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 99–28296 Filed 10–29–99; 8:45 am]

BILLING CODE 4310–55–P

federal register

Monday
November 1, 1999

Part III

Department of Education

34 CFR Parts 682 and 685
Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 685

RIN 1845–AA00

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Family Education Loan (FFEL) Program regulations and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. These final regulations are needed to implement recently enacted changes to the Higher Education Act of 1965, as amended (HEA) made by the Higher Education Amendments of 1998 (1998 Amendments). The final regulations deal with provisions of the 1998 Amendments that affect FFEL borrowers, schools, lenders, and guaranty agencies and Direct Loan borrowers and schools. These final regulations seek to improve the efficiency of Federal student aid programs, and, by so doing, to improve their capacity to enhance opportunities for postsecondary education.

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that FFEL and Direct Loan program participants may, at their discretion, choose to implement certain provisions of §§ 682.102, 682.200, 682.202, 682.206, 682.401, 682.402, 682.406, 682.409, 682.414, 682.604, 682.610, 685.102, 685.201, 685.304, and 685.402 on or after November 1, 1999. For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For the FFEL Program, Ms. Patsy Beavan, or for the Direct Loan Program, Ms. Nicki Meoli, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These regulations implement certain changes made to the HEA by the 1998 Amendments (Pub. L. 105–244) that affect the FFEL and Direct Loan programs.

On August 10, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for the FFEL and Direct Loan programs in the **Federal Register** (64 FR 43428). In the preamble to the NPRM, the Secretary discussed on pages 43429 to 43438 the following proposed changes:

FFEL Program Changes

- Amending § 682.102(a) to require the use of the Free Application for Federal Student Aid (FAFSA) as the application for FFEL subsidized and unsubsidized Stafford loans beginning in academic year 1999–2000 and to reflect the use of a Master Promissory Note (MPN) that would allow borrowers to receive, in addition to an initial loan, additional loans for the same or subsequent periods.
- Amending § 682.200(b) to revise the definition of "Lender" to permit lenders to provide assistance to schools that is comparable to the kinds of assistance provided by the Secretary under, or in furtherance of, the Direct Loan Program.
- Amending § 682.201(c)(1)(i)(D) and (E) to prohibit a borrower from receiving an FFEL Consolidation loan to repay a loan made under the HEA on which the borrower is subject to a judgment secured through litigation or to an administrative wage garnishment order.
- Amending § 682.201(c)(1)(iv)(B) to permit a borrower who has multiple FFEL Program holders to apply to any eligible FFEL lender for an FFEL Consolidation loan.
- Amending § 682.201(d)(2) to expand the universe of loans that may be included in an FFEL Consolidation loan.
- Amending § 682.202(a) to include the interest rate formulas that apply to subsidized Stafford, unsubsidized Stafford, and PLUS loans that are first disbursed on or after October 1, 1998 and before July 1, 2003 and interest rate formulas for Consolidation loans.
- Amending § 682.202(b) to reflect that a lender may add accrued interest to the principal (capitalization) of an unsubsidized Stafford loan only when the loan enters repayment, at the expiration of a period of authorized deferment, at the expiration of a period of authorized forbearance, and when the borrower defaults. This section also provides that, for loans first disbursed on or after July 1, 2000, periods of forbearance on both subsidized and unsubsidized Stafford loans would be covered by the new capitalization rules.
- Amending § 682.202(c) to permit a lender to assess a lower origination fee to a borrower demonstrating "greater financial need," as determined by the borrower's adjusted gross income and to allow a lender to consider a borrower as demonstrating greater financial need if—
- The borrower's expected family contribution (EFC) used to determine eligibility for the loan is equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified;
- The borrower qualifies for a subsidized Stafford loan; or
- The borrower qualifies according to a comparable alternative standard approved by the Secretary.
- Amending § 682.206 to conform to changes made in § 682.603 related to loan certification of borrower eligibility by the school and § 682.401 related to the use of the MPN.
- Amending § 682.207 to require lenders to disburse loans in a single installment (rather than in multiple installments as generally required) if so directed by a school that meets the criteria specified in § 682.604.
- Amending § 682.209(a)(7)(ix) to require a lender to offer new FFEL borrowers, including FFEL Consolidation loan borrowers, whose total outstanding FFEL loans exceed $30,000, an extended repayment plan with fixed or graduated repayment amounts to be paid over a period not to exceed 25 years.
- Amending § 682.301(a)(3) to include the authority for payment of interest subsidy during a period of authorized deferment on the portion of an FFEL Consolidation loan that repaid a subsidized FFEL or Direct Loan program loan.
- Amending § 682.402(h)(1)(iv) to provide that a lack of evidence of a borrower's confirmation for subsequent loans made under an MPN will not lead to a denial of claim payment to the lender unless the loan is found to be unenforceable.
- Amending § 682.402(i)(1)(i) to reflect amendments to the Bankruptcy Code that eliminated the seven-year repayment standard for discharge of FFEL Program loans for bankruptcy petitions filed on or after October 8, 1998 and establish undue hardship as the only criteria for a bankruptcy discharge.
- Amending § 682.402(i)(1)(iv) to revise lender and guaranty agency claim filing procedures related to loans for which bankruptcy petitions are filed.

• Amending § 682.414(a)(4) and (5) to require lenders to maintain documentation of the confirmation processes the lender and the school used for subsequent loans under an MPN and specify that a lender or guaranty agency may, to accommodate the MPN process, retain a true and exact copy of the promissory note rather than the original note.

• Amending § 682.603(b) to require a school to certify only the loan amount for which the borrower is eligible and to provide a disbursement schedule to the lender.

FFEL and Direct Loan Program Changes

• Amending §§ 682.200(b) and 685.102(b) to—

• Reflect that the length of time a borrower is delinquent before a default occurs on an FFEL or Direct Loan program loan is 270 days for a loan repayable in monthly installments and 330 days for FFEL Program loans repayable less frequently than monthly;

• Reflect that schools now are required to include veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code and national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (Americorps) as estimated financial assistance for the purpose of determining a borrower's eligibility for unsubsidized FFEL and Direct Loan program loans; and

• Define the term "master promissory note" (MPN) as a promissory note under which a borrower may receive loans for a single academic year or multiple academic years.

• Amending §§ 682.204 and 685.203 to modify the method for calculating the reduced annual loan limits that apply to FFEL and Direct Loan borrowers enrolled in programs of study or remaining balances of programs of study that are less than an academic year in length and to specify annual loan limits for non-degree preparatory and teaching credential coursework.

• Amending §§ 682.207(e), 682.603(g), 682.604(c), 685.301(b) and 685.303(b) to reflect that an FFEL or Direct loan program school is exempt from the multiple disbursement requirement for single-term loans and the delayed delivery requirement if—

• The school's FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate is less than 10 percent for each of the three most recent fiscal years for which data are available; or

• The school is certifying or originating a loan to cover the cost of attendance in a study abroad program and has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the single most recent fiscal year for which data are available.

• Amending §§ 682.209(a)(6) and 685.207(b) and (c) to exclude certain periods of service by a borrower in the Armed Forces from the six-month grace period for FFEL and Direct Loan program borrowers.

• Amending §§ 682.210(c) and 685.204(b) to reflect that FFEL lenders and the Secretary may determine a borrower's eligibility for an in-school deferment when—

• The borrower submits a request for deferment along with documentation verifying the borrower's eligibility for the deferment to the borrower's FFEL lender, or the Secretary for a Direct Loan;

• The borrower's FFEL lender, or the Secretary for a Direct Loan, receives either a newly completed loan certification or, as part of the MPN process, information from the borrower's school indicating that the borrower is eligible to receive a new loan; or

• The borrower's FFEL lender, or the Secretary for a Direct Loan, receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis.

• Amending § 682.210(h) to permit borrowers who are eligible for unemployment insurance benefits to submit evidence of their eligibility for the benefits to their FFEL lender, or to the Secretary for a Direct Loan (see § 685.204(b)(2)), to qualify for initial and subsequent periods of an unemployment deferment.

• Amending §§ 682.211(f)(9) and 685.205(b)(9) to permit an FFEL lender, and the Secretary for a Direct Loan, to grant a forbearance to a borrower for a period not to exceed 60 days after the borrower requests a deferment, a forbearance, a change in repayment plan, or a consolidation loan.

• Amending §§ 682.401(d) and 685.402 to state the requirements that a school must meet to be authorized to use a single MPN as the basis for multiple loans obtained by a borrower.

• Amending §§ 682.402, 685.212, and 685.215 to provide for discharge of the amount of a borrower's FFEL or Direct Loan program loan disbursed on or after January 1, 1986 that should have been refunded by the borrower's school.

• Amending §§ 682.604(f) and (g) and 685.304(a) and (b) to permit schools to use electronic means to provide initial counseling and exit counseling to borrowers and to require two additional counseling elements based on new statutory initiatives.

• Amending § 685.300 to provide schools the option to participate in one or more of the loan programs (subsidized, unsubsidized, and PLUS) under the FFEL and Direct Loan programs.

These final regulations contain several changes from the NPRM. We fully explain these changes in the Analysis of Comments and Changes elsewhere in this preamble.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year (which begins July 1) in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has designated the following regulations for early implementation:

§§ 682.102, 682.200, 682.206, 682.401, 682.402, 682.406, 682.409, 682.414, 682.604, 682.610, 685.102(b), 685.201(a), and 685.402(f)—Upon publication, the provisions in these regulations related to the Master Promissory Note (MPN) may be implemented by borrowers, schools, lenders, and guaranty agencies in the FFEL Program and borrowers and schools in the Direct Loan Program at their discretion. This means that participants in both the FFEL and Direct Loan programs may begin using a single MPN as the basis for multiple loans obtained by a borrower as long as they do so consistent with all regulatory provisions and accompanying discussion related to use of the MPN that are included in this final rule.

Section 682.200(b) Definition of Lender—Upon publication, these regulations may be implemented by FFEL lenders at their discretion. This means that FFEL lenders may provide assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Direct Loan Program.

Section 682.202(c)—Upon publication, these regulations may be implemented by FFEL lenders at their discretion. This means that FFEL lenders may assess a lower origination fee to a borrower demonstrating "greater

financial need" as provided in these regulations.

Section 682.604(f)(2)(i), 682.604(g)(2)(vii), 685.304(a)(3)(i), and 685.304(b)(4)(vii)—Upon publication, these regulations may be implemented by FFEL and Direct Loan program schools at their discretion. This means that schools may explain the use of an MPN during initial counseling and review information on the availability of the Department's Student Loan Ombudsman's office during exit counseling.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 10, 1999 in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, 1999 and several comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

These final regulations address changes that are specific to the FFEL Program and changes that are common to both the FFEL and Direct Loan programs. The following analysis begins with comments and changes that affect only the FFEL Program, followed by comments and changes that affect both the FFEL and Direct Loan programs.

Federal Family Education Loan Program

Section 682.102—Consolidation Loan Application

Comment: Several commenters representing guaranty agencies, lenders, and servicers recommended that we clarify § 682.102(d) to explain which holder(s) must be contacted for a Consolidation loan when a married couple wants to jointly consolidate their loans. The commenters suggested that the proposed language appears to require a married couple seeking a joint Consolidation loan to contact all the holders for one of the applicant's loans before being able to consolidate if either or both applicants have multiple holders.

Discussion: We agree that this language needs to be revised to be consistent with § 682.201(c)(2)(ii). If each of the applicants has only one holder, then only the holder for one of the applicants must be contacted. If either or both applicants have multiple loan holders, the applicants are permitted to submit the application to any lender participating in the Consolidation Loan Program.

Change: We have revised § 682.102(d) to clarify the application requirements for married borrowers who want a joint Consolidation loan.

Section 682.200—Definitions

Lender-Prohibited Inducements

Comment: A commenter representing a guaranty agency suggested that we clarify that the inducement provision applies only to originating lenders.

Discussion: We do not believe that the inducement prohibition applies only to originating lenders. The HEA clearly states that the term "eligible lender" does not include any lender that offers, directly or indirectly, points, premiums, payments or other inducements, to any educational institution or individual in order to secure applicants. The statute does not distinguish between originating lenders and other loan holders.

Change: None.

Repayment Period

Comment: Some commenters recommended that we clarify that the 25-year extended repayment schedule is available to PLUS loan borrowers.

Discussion: We agree with the commenters.

Change: We have revised the definition of "Repayment period" in § 682.200(b) to specifically reference PLUS loan borrowers.

Section 682.201—Eligible Borrowers

Consolidation Loans

Comment: Some commenters suggested that § 682.201(c)(1) should be restructured to clarify that loans subject to litigation or administrative wage garnishment are eligible for inclusion in a Consolidation loan (including during the 180-day period for adding loans to a Consolidation loan) once the judgment or wage garnishment order is vacated, even if the judgment or order is in place at the time the borrower applies for the Consolidation loan. The commenters pointed out that the restriction in section 428C(a)(3)(A)(ii) of the HEA need not be read to apply to the prohibition against consolidating loans which are subject to a judgment or wage garnishment order contained in section 428C(a)(3)(A)(i) of the HEA. Instead, the restriction applies only to defining an eligible borrower's status on the loans to be consolidated. The commenters believe this clarification will ensure that a borrower is not prevented from consolidating a loan which was subject to a judgment or wage garnishment order at the time of application, provided the order is vacated prior to consolidating the loan and will also protect the federal fiscal interest by allowing the guarantor to ensure that the borrower has completed the application process before the guarantor cancels the judgment or garnishment order.

Discussion: We agree with the commenters that this change will preserve a borrower's eligibility to consolidate while protecting the federal fiscal interest. We agree with the commenters that it is prudent for the holder to delay vacating a judgment or canceling a wage garnishment order until after the borrower has completed the consolidation process. We understand the commenters' concern that if a borrower applies for a Consolidation loan and the holder vacates the loan prior to the consolidation, the borrower may not follow through.

Change: We have revised § 682.201(c)(1) to permit lenders to consolidate loans based on the status of the loans at the time of consolidation, not the time of application.

Comment: Some commenters stated that they believed that proposed § 682.201(d), that specifies when a borrower's eligibility to receive a Consolidation loan terminates, conflicts with § 682.201(e) that specifies when a Consolidation loan borrower may consolidate an existing Consolidation loan. The commenters believe it is unclear whether the permission to consolidate a Consolidation loan in

paragraph (e) overrides paragraph (d)(1), which states that a borrower's eligibility to obtain a new Consolidation loan is terminated upon receipt of a Consolidation loan except where the borrower receives a new loan after the date of the original consolidation. The commenters also suggested that we clarify that a married couple may consolidate their individual Consolidation loans into a single joint Consolidation loan.

Discussion: As reflected in § 682.201(e), a Consolidation loan borrower may obtain a new Consolidation loan if the borrower consolidates the outstanding Consolidation loan with at least one other eligible loan. A borrower is not required to obtain a new loan in order to consolidate. Also, as the commenters noted, a married couple may consolidate their respective Consolidation loans into a single joint Consolidation loan without either borrower being required to obtain a new loan.

Change: We have restructured § 682.201(d) and (e) to clarify the circumstances under which borrowers may consolidate an outstanding Consolidation loan to address the commenters' concerns.

Section 682.202—Permissible Charges by Lenders to Borrowers Interest Rates

Comment: Several commenters recommended that § 682.202(a)(1)(vii) be revised to specify that the interest rate formula included in this paragraph applies to a Stafford loan for which the first disbursement was made on or after July 1, 1995 and prior to July 1, 1998 without reference to the period of enrollment for which the loan was made. The commenters pointed out that although Dear Colleague Letter 93–L–161 (dated November 1993), which summarized the interest rate change for the period July 1, 1995 and prior to July 1, 1998, included a reference to the period of enrollment for Stafford loans made on or after July 1, 1995 (as well as for loans made on or after July 1, 1998), subsequent guidance issued by the Department (e.g., annual memoranda regarding applicable interest rates) did not include this reference for the 1995–1998 period.

Discussion: We agree with the commenters.

Change: We have revised § 682.202(a)(1)(vii) to delete reference to a period of enrollment that includes or begins on or after July 1, 1995.

Comment: Several commenters suggested that § 682.202(a)(3)(iii) be revised to delete the reference in the SLS interest rate formula to "the period of enrollment that began prior to July 1, 1994" because this paragraph applied to SLS loans made on or after October 1, 1992 through the cessation of the SLS Program on July 1, 1994. The commenters pointed out that Dear Colleague Letter 93–L–161 (dated November 1993), summarizing Public Law 103–66, specified that the termination of the SLS program was effective for periods of enrollment that began on or after July 1, 1994, without regard to the loan disbursement date.

Discussion: We agree with the commenters.

Change: We have removed the technical change proposed in § 682.202(a)(3)(iii) in the NPRM referencing loans disbursed prior to July 1, 1994.

Comment: In response to the Secretary's request for comments on how to make these proposed regulations easier to understand, a major association representing credit unions suggested that for clarity, we provide an example to clarify the regulatory requirement to use weighted average interest rates for Consolidation loans.

Discussion: The weighted average interest rate used for Consolidation loans in both the FFEL and Direct Loan programs should be calculated based on the interest rates that apply to the loans being consolidated at the time the loan holders complete the verification certificates. In making the calculation, it is important to note that an interest rate that is lower than the repayment period rate applies to most subsidized and unsubsidized Stafford loans in the FFEL and Direct Loan programs during the in-school, grace, and deferment periods. This affects the calculation of the weighted average interest rate. If, for example, a loan is in a grace period at the time the loan holder completes the verification certificate, the lower grace period interest rate would be used in the calculation of the weighted average interest rate on the Consolidation loan. Conversely, if the borrower applies for a Consolidation loan after entering repayment on a loan, the higher repayment interest rate of the loan being consolidated would be used in calculating the weighted average interest rate on the Consolidation loan.

The weighted average interest rate is a single interest rate that is calculated by using the borrower's loan balances and the current annual interest rate for each of the borrower's loans.

For example: A borrower has two subsidized Federal Stafford Loans, one for $10,000 and the other for $5,000, both with an interest rate of 8.25 percent. The borrower also has a $3,500 unsubsidized Federal Stafford Loan with an interest rate of 7.46 percent and a $3,000 Federal Perkins Loan with a 5.0 percent interest rate. The borrower consolidates these loans.

The following steps outline one way to calculate the weighted average interest rate:

1. Multiply the balance of each loan being consolidated by the interest rate that applies to that loan at the time the verification certificate is completed.
2. Add the calculated interest amounts for all loans being consolidated ($1,648.60).
3. Add the loan balances for all loans being consolidated ($21,500).
4. Divide the sum of the calculated interest amounts by the sum of the loan balance amounts (7.66%).
5. Round the quotient (the answer to Step 4) to the nearest higher one-eighth of one percent (7.75%).
6. Compare the result in Step 5 to the 8.25% maximum interest rate and determine which is lower. The lower of the two rates is the borrower's fixed interest rate for the Consolidation loan.

The weighted average interest rate for the borrower in this example is 7.75%.

Change: None.

Origination Fee

Comment: Several commenters pointed out that in § 682.202(c)(2)(i) the term "minimum" was incorrectly used rather than "maximum" when referencing the criteria for charging a lower origination fee to some borrowers.

Discussion: We agree with the commenters that the term "minimum" was inadvertently used and is not consistent with the language in the preamble to the NPRM. To be eligible for a lower origination fee under this provision, the borrower's EFC used to determine the eligibility for the loan must be equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified.

Change: We have revised § 682.202(c)(2)(i) to replace "minimum" with "maximum."

Comment: Two commenters representing national lenders objected to proposed § 682.202(c)(4) that would provide that, for purposes of determining whether a lender is charging all similarly situated borrowers the same origination fee, all lenders under common ownership, including ownership by a common holding company, constitute a single lender. The commenters argued that this provision violates the plain language of the HEA and conflicts with Congressional intent and settled administrative policy underlying the Federal banking laws. They further stated that this provision is

not needed to prevent manipulation of bank subsidiaries of bank holding companies to circumvent the nondiscrimination provision. They stated that it unfairly places subsidiaries of large bank holding companies at a competitive disadvantage in specific geographic areas in which they provide loans. The commenters also argued that the proposed regulations will eliminate competition in the FFEL program, providing some state secondary markets or primary lenders a stranglehold in certain states. They contended that subsidiaries that previously have maintained separate origination fee discount policies to compete in state or regional markets would be required to apply one fee policy across the country, leaving them no choice but to withdraw from certain markets. One of the commenters noted that they had maintained a system-wide policy for their subsidiaries which was geographically based, allowing the particular subsidiary to establish its policy in its geographical area and they recommended that the Secretary not disregard such systems, particularly those that predate the enactment of the nondiscrimination provision.

Discussion: In light of the commenters' concerns, we have reconsidered the manner in which the proposed regulation would have applied the origination fee non-discrimination provisions. We do not believe that implementing this provision of the law to ensure greater equality in the origination fees assessed to similarly situated FFEL borrowers should have the unintended negative consequence of reducing competition in the FFEL Program and limiting a borrower's choice of a lender. We believe that another approach to applying the provision could be used to prevent manipulation with intent to circumvent the law while preserving lender choice, access, and competition. Therefore, we have decided that a state-based rather than a nationwide approach to applying the origination fee non-discrimination provision should be used. We believe that a state-based approach to applying the provision will prevent manipulation by lenders with the intent to circumvent the law while preserving lender choice, access, and competition in the FFEL Program. Moreover, we believe that a state-based application of the requirements addresses the commenters' concerns that national and multi-state lenders will be prevented from competing effectively and may be forced to leave certain markets.

Change: Section 682.202(c) has been revised to clarify the definition of lender to provide that any lending entity, including any multi-state lending entity, that makes loans in a particular state, must apply any policy of lower origination fees consistently to all borrowers residing in that state or who attend school in that state.

Comment: One commenter recommended that we clarify the documentation a lender should use to demonstrate the borrower's "greater financial need" for origination fee discount purposes.

Discussion: We believe that it is important to provide lenders with flexibility in this area and therefore decline to regulate documentation standards that a lender must use to determine greater financial need.

Change: None

Section 682.206—Due Diligence in Making a Loan

Comment: Some commenters recommended that § 682.206(a)(1) be revised to clarify that the lender's responsibilities and obligations in the loan making process with respect to having a borrower complete and sign the promissory note applies only to a borrower with subsequent loans (rather than "multiple" loans) made under a "valid" MPN.

Discussion: We agree with the commenters that the use of the term "subsequent" loans is more appropriate than using the term "multiple" loans. However, we believe it is unnecessary to specify that the MPN is "valid" because a lender has no basis for relying on an invalid or expired MPN for any reason.

Change: We have revised § 682.206(a) by substituting "subsequent" for "multiple."

Section 682.209—Repayment of a Loan

Comment: Several commenters recommended that § 682.209(a)(7)(ix) be restructured to clarify that only those borrowers who first obtained an FFEL Program loan on or after October 7, 1998 and with outstanding debt totaling more than $30,000 qualify for the extended repayment plan. The commenters suggested that, as proposed, the regulations do not fully define the eligibility criteria for an extended repayment plan.

Discussion: We agree with the commenters.

Change: We have revised § 682.209(a)(7)(ix) to clearly provide that, under an extended repayment schedule, a new borrower whose total outstanding principal and interest in FFEL loans exceeds $30,000 may repay the loan on a fixed annual or graduated repayment plan for a period that may not exceed 25 years.

Comment: Several commenters suggested that § 682.209(a)(8)(i) and (ii), governing the period of time to repay a loan, be revised to include reference to the 25-year extended repayment plan.

Discussion: We agree with the commenters.

Change: We have revised both paragraphs to provide for repayment of 25 years under an extended repayment plan.

Comment: Several commenters suggested that § 682.209(h)(3)(ii) be revised to clarify that defaulted Title IV loans on which satisfactory repayment arrangements have not been made may not be taken into consideration when determining the maximum repayment period on a Consolidation loan.

Discussion: We believe that the regulations clearly state that only a defaulted Title IV loan on which satisfactory repayment arrangements have been made may be included for purposes of establishing the maximum repayment period for a Consolidation loan. Otherwise, the regulations specify that all defaulted loans, including non-Title IV loans, may not be included in the determination of the maximum repayment period. However, to clarify this point, we will specify in the regulations that the balance used in making this determination may not include "any defaulted loans."

Change: We have inserted the word "any" before "defaulted loans" in § 682.209(h)(3)(ii).

Section 682.210—Deferment

Comment: Several commenters noted that proposed § 682.210(a)(3) indicates that interest may be paid by the Secretary for all or a portion of a qualifying Consolidation loan that meets the requirements under § 682.301 when the loan is made. These commenters recommended that the reference to "when the loan is made" be deleted. The commenters stated their belief that this phrase was carried over from the existing provision which addresses Stafford loans only and could be misunderstood as an indication that loans added within the 180-day period following the date a Consolidation loan is made may not be eligible for interest benefits.

Discussion: We agree with the commenters that the phrase "when the loan is made" could be misunderstood to exclude from interest subsidy loans added to a Consolidation loan within the 180-day period following the date the Consolidation loan is made.

Change: We have revised § 682.210(a)(3) by deleting the phrase "when the loan is made."

Comment: Some commenters stated that the parenthetical phrase "(unless based on the dependent's status)" following reference to the PLUS program in § 682.210(c)(5) is irrelevant and should be removed. The commenters suggested this deletion is appropriate because borrowers serving in a medical internship or residency program are prohibited by law from receiving an in-school deferment, regardless of whether the deferment is on the borrower's loan based on his or her own service, or on a parent borrower's loan based on his or her dependent's service in the internship or residency program.

Discussion: We disagree with the commenters. The parenthetical exception relates to the eligibility of a parent PLUS borrower to defer a PLUS loan based on their dependent son or daughter's attendance in school. We have never interpreted the prohibition to apply to an intern's or resident's eligibility to defer a parent PLUS loan based on the intern's or resident's dependent's in-school status.

Change: None.

Section 682.301—Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

Comment: Several commenters suggested that § 682.301(a)(3)(ii) should be revised to clarify that to qualify for interest benefits, a Consolidation loan made on or after August 10, 1993, but prior to November 13, 1997, must have been comprised solely of subsidized loans. The commenters believe that this provision might be misinterpreted to include Consolidation loans that include but are not solely comprised of subsidized Stafford loans.

Discussion: We do not agree that the term "solely" needs to be added to provide clarity. However, we have determined that moving the word "only" would clarify the regulations.

Change: We have revised § 682.301(a)(3)(ii) to clarify that a Consolidation loan borrower qualifies for interest benefits if the loan application was received on or after August 10, 1993, but prior to November 13, 1997 and if the loan consolidates only subsidized Stafford loans.

Comment: Numerous commenters representing lenders, guaranty agencies, servicers, and secondary markets recommended that § 682.301(a)(iii) be restructured to separately reflect the statutory provision governing the eligibility of Consolidation loans made on or after November 13, 1997 and on or after July 1, 2000 for interest subsidies. The commenters indicated that conflicting guidance has been disseminated since November 13, 1997 regarding the loan types that may comprise the subsidized portion of a Consolidation loan for interest subsidy purposes, specifically whether it includes all subsidized FFEL loans or only subsidized Stafford loans. These commenters suggest that the final regulations should clarify that lenders are permitted to follow either of these two approaches for loans made on or after November 13, 1997 and prior to July 1, 2000. The commenters further recommended that the final regulations should clarify that any regulatory provision authorizing use of either approach may be implemented earlier than July 1, 2000.

Discussion: We understand that lenders may have received differing guidance on the scope of the interest subsidy available to FFEL Consolidation loan borrowers after the enactment of the Emergency Student Loan Consolidation Act of 1997 (Pub. L. 105–78). However, we have identified only a small subset of borrowers, specifically subsidized Consolidation loan borrowers who include their Consolidation loans in a subsequent Consolidation loan, as potentially affected by the difference in guidance. The commenters did not present any evidence that the differing guidance for this very small group of borrowers represents a problem. We do not believe that this speculative small problem necessitates making a change in the regulations. However, we remind lenders that we are available to provide technical assistance on a case-by-case basis should it be necessary.

Change: None.

Section 682.401—Basic Program Agreement

Comment: Several commenters recommended that § 682.401(b)(5)(i) be revised to remove reference to an "application" as it regards the borrower's right to indicate a preferred lender and instead include a reference to other information submitted during the loan origination process. The commenters pointed out that there is not, under the MPN process, a specific document entitled "application."

Discussion: We agree with the commenters. The item allowing the borrower to indicate a preferred lender is now contained on the MPN.

Change: We have revised § 682.401(b)(5)(i) to delete the word "application" and replace it with "in other written or electronic documentation submitted during the loan origination process."

Comment: Several commenters recommended that § 682.401(b)(5)(ii)(D) be removed to eliminate the requirement that the borrower provide information from the school demonstrating the borrower's eligibility for the loan and providing the maximum loan amount that the student may borrow. The commenters noted that this data flow is inconsistent with changes made to the HEA by the 1998 Amendments.

Discussion: Although the HEA no longer requires the student to provide, through the school, information on the student's eligibility for the loan, the school must still provide the loan amount. We will revise the regulations to reflect this change.

Change: We have revised § 682.401(b)(5)(C) (formerly § 682.401(b)(5)(D)) to indicate that the borrower must provide to the lender information from the school on the maximum amount that may be borrowed by or on behalf of the student.

Section 682.406—Conditions of Reinsurance Coverage

Comment: One commenter representing a guaranty agency pointed out that this section does not reference the reduced rebate fee on Consolidation loans that was effective for Consolidation loans based on applications received on or after October 1, 1998 through January 31, 1999. The commenter noted that the current regulations indicate that the interest payment rebate fee of 1.05 percent applies to all Consolidation loans disbursed on or after October 1, 1993. The 1998 Amendments reduced the fee to 0.62 percent for loans made on applications received from October 1, 1998 through January 31, 1999.

Discussion: We agree with the commenter that the regulations should reflect the reduced rebate fee that applied to Consolidation loans based on applications received from October 1, 1998 through January 31, 1999.

Change: We have revised § 682.406 to incorporate the reduced fee of 0.62 percent on Consolidation loans for this period.

Section 682.414—Records, Reports, and Inspection Requirements for Guaranty Agency Programs

Comment: Many commenters representing lenders, guaranty agencies, servicers, and secondary markets recommended that the regulations be changed to clearly state that returning a true and exact copy of the original promissory note to the borrower has the same standing as the original promissory note. The commenters suggested that the regulations should be revised to indicate that the true and

exact copy shall be admissible as evidence in all state and federal courts notwithstanding any provision of state law to the contrary. The commenters further suggested that the regulations reflect that the lender may send a notice to the borrower in place of the original MPN when a loan made under an MPN is paid in full by or on behalf of the borrower. The commenters stated that they believe that sending the notice effectively preempts any state law requiring the lender to send the borrower the original or a copy of the promissory note and recommended that the Secretary provide an explanation of this position in the final regulations to ensure that this preemption is fully understood.

Discussion: Section 432(m)(1)(D) of the HEA, as added by the 1998 Amendments, specifically states that notwithstanding any other provision of law, each loan made under an MPN shall be separately enforceable in all Federal and State courts on the basis of an original or copy of the MPN. Therefore, the statute itself has the effect of preempting state law and it is not necessary for the Secretary to regulate further in this area. The regulations also allow the lender to send a notice to a borrower that informs the borrower that the loan is paid in full. Indeed, this approach must be used with the MPN process, which provides for the making of multiple loans with different repayment dates and which may be held by different loan holders using a single note.

Change: None.

FFEL and Direct Loan Programs

Sections 682.200 and 685.102—Definition of Estimated Financial Assistance

Comment: One commenter representing a school stated that the different treatment of veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code and national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (Americorps) in determining a student's eligibility for subsidized FFEL and Direct Loan program loans and in determining a student's eligibility for unsubsidized loans is administratively burdensome to schools. To reduce the administrative burden on schools, the commenter recommended that we treat all resources the same way for all Title IV programs. Another commenter representing FFEL guaranty agencies noted the discrepant treatment between subsidized and unsubsidized loans as it applies to Americorps benefits and encouraged the Secretary to pursue a legislative change that would allow schools to exclude Americorps benefits when determining a borrower's eligibility for unsubsidized, as well as subsidized, FFEL and Direct Loan program loans.

Discussion: We realize that the different treatment of veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code and Americorps benefits in determining a student's eligibility for subsidized FFEL and Direct Loan program loans and in determining a student's eligibility for unsubsidized loans complicates award packaging and may be administratively burdensome to schools. However, this different treatment is required by Section 480(j) of the HEA.

Change: None.

Comment: A commenter pointed out that there are two versions of the Montgomery GI Bill—active duty and reserve—and suggested that it would be helpful to clarify that Chapter 30 of Title 38 of the United States Code is the active duty version.

Discussion: We agree with this suggestion.

Change: We have revised the definition of estimated financial assistance in §§ 682.200(b) and 685.102(b) to clarify that Chapter 30 of Title 38 of the United States Code is the active duty version of the Montgomery GI Bill.

Sections 682.204 and 685.203—Loan Limits

Comment: One commenter representing a school suggested an alternative method for determining prorated loan amounts instead of the method proposed in the NPRM. The alternative method recommended by the commenter included looking at the maximum annual loan limit, dividing by the number of terms in the year, and then multiplying by the number of terms during which the borrower was enrolled half time or more.

Another school commenter believed that the rationale for prorating the loan amounts of graduating seniors in a program of undergraduate education is unclear. This commenter noted that the statute indicates that "if such student is enrolled in a program of undergraduate education which is less than one academic year," proration is required. The commenter did not believe that a student who is in the final term of a program of undergraduate education that is greater than one academic year meets this criteria. This commenter also pointed out that borrowers other than graduating seniors may be eligible to receive up to the full applicable annual loan limit depending upon costs and other financial assistance regardless of whether or not the borrower is enrolled less than full-time or for one term only. The commenter believes that the Department should be concerned about overborrowing before the borrower reaches the final term if the rationale for prorating the loan amounts of graduating seniors is to ensure that loan amounts do not unnecessarily inflate debt levels.

Another commenter representing a school observed that the proposed regulations do not provide for consistent treatment of loan proration for programs or remainder of programs of less than an academic year. The commenter believes the regulations contradict the language in the 1998 Amendments that specifically requires the use of semester, trimester, quarter, or clock hours when prorating the loan limits for programs or portions of programs that are less than a full academic year. This commenter stated that the regulations should reflect the HEA by prorating the total amount the student may borrow for a program of study that is less than a full academic year in length or a portion of a program that is less than a full academic year in length by using the relationship of the program credit to that of a full academic year. The commenter believes that this simplified proration should be used for all years of undergraduate students applied to the appropriate full academic year limits.

Discussion: Although we appreciate the suggestion of an alternative method for loan proration, the loan proration requirements, including the method of calculating prorated loan amounts, is statutory. As a result, the regulations mirror the statute as closely as possible, and alternative methods of calculation cannot be considered without statutory change. The application of loan proration to borrowers in their final term of their undergraduate programs is also statutory and was retained by the 1998 Amendments. The approach to loan proration for programs or portions of programs of less than an academic year recommended by the final commenter would result in some students receiving a full annual loan limit for a program that is less than an academic year as that term is defined in statute. The 1998 Amendments clarified that annual loan limits are authorized for an academic year as that term is defined in section 481(a)(2) of the HEA. The definition contains a minimum standard of instructional time and academic coursework. A program that does not meet both of these statutory standards for an academic year is clearly

less than an academic year, and students enrolled in such a program are not eligible to receive a full annual loan amount. The strictly proportional calculation recommended by the commenter would result in a full annual loan amount for students in programs that meet the academic coursework standard of the definition in section 481(a)(2) of the HEA, but do not meet the standard for instructional time. We do not believe that this result would be consistent with Congressional intent. A proportional loan amount calculated as a ratio of the academic credit to the academic year is used for remaining portions of programs of less than an academic year. Under these circumstances, the borrower is completing a program that is longer than an academic year and therefore examining the remaining portion of the program against both standards of the academic year is not applicable.

Change: None

Comment: Several commenters pointed out that § 682.204 (a)(2) of the proposed regulations addressed students enrolled in one-year programs with less than a full academic year remaining, but did not cover remaining balances of less than an academic year for other programs.

Discussion: The commenters are correct that this section does not address students enrolled in programs of study with less than a full academic year remaining. Rather, it addressed only students in one-year programs of study with less than an academic year remaining. We believe that revising the regulations to include a provision for students in remaining balances of programs, as the commenters suggest, will satisfactorily address both groups of students.

Change: We have revised §§ 682.204(d)(2) and 685.203(c)(2) to provide for an additional unsubsidized annual Stafford loan amount for students enrolled in programs of study with less than a full academic year remaining to complete the program. We have deleted reference to a one-year program with less than a full academic year remaining in §§ 682.204(d)(2) and 685.203(c)(2).

Sections 682.209 and 685.207—Grace Period for Military Service

Comment: Several commenters representing FFEL lenders, servicers, and guaranty agencies pointed out that the preamble discussion in the NPRM indicated that borrowers who qualified for the exclusion of certain periods of service in the Armed Forces from the six-month grace period would be required to re-enroll within 12 months of their return from active duty service. While the commenters agreed that 12 months may be a reasonable amount of time to re-enroll, they noted that the requirement was not included in the proposed regulations and requested that we not limit the period to 12 months in the final regulations. A commenter representing a school supported our acknowledgement that some borrowers may need more time than others to re-enroll in the next available regular enrollment period and the proposal to restore the full six-month grace period to borrowers whose loans were in the grace period when the borrowers were called to active duty.

Discussion: The commenters are correct that the proposed regulations did not include the requirement that the period necessary for a borrower to resume enrollment at the next available regular enrollment period when the borrower returns from active duty service be limited to 12 months. As discussed in the preamble to the NPRM, the time period in which a borrower needs to re-enroll in the "next available regular enrollment period" after returning from active duty service may need to be longer for some borrowers than others, especially if the borrower is pursuing a non-traditional academic program, and given the fact that the borrower may not re-enroll in the same program when returning from active duty. The Secretary generally believes that twelve months allows more than ample time for the majority of borrowers to re-enroll and provides a reasonable limit (within the three-year total exclusion limitation) on the amount of time that may be excluded from a borrower's six-month grace period. However, in keeping with the agreement reached during negotiated rulemaking, the Secretary has not included this limitation in the regulations.

Change: None.

Sections 682.210 and 685.204—Deferment

In-School Deferment

Comment: Commenters representing FFEL lenders and guaranty agencies suggested that the rules regarding the end date for an in-school deferment be removed from § 682.210(a) because paragraph (a) provides general information applicable to all deferments and should not contain information specific to a particular deferment. The commenters believed that information related to the in-school deferment end date should be contained within the in-school deferment section in § 682.210(c)(3). The commenters also requested that we revise § 682.210(c)(3) to reflect that valid enrollment information may be received by lenders using an electronic format rather than a form as the proposed regulatory language suggests.

Discussion: We do not agree with the commenters that information about the end date for an in-school deferment should be removed from § 682.210(a). We believe this information is correctly placed because it is contained in a provision that outlines when authorized deferment periods end. However, we agree that the process information included in the proposed regulatory language would be better placed in § 682.210(c)(3). We also agree with the commenters that the proposed regulatory language in § 682.210(c)(3) should be revised to reflect that valid enrollment information may be received by lenders electronically.

Change: We have moved the in-school deferment process information from § 682.210(a)(6)(iv) to § 682.210(c)(3). We also believe that the revisions to § 682.210(c)(3) accommodate the use of electronics to provide valid enrollment information.

Comment: A commenter representing a guaranty agency requested clarification that both FFEL lenders, and the Secretary for Direct Loans, may process an in-school deferment based on student status information that does not come directly from the borrower's school. The commenter pointed out that the proposed regulatory language did not make it clear that the student status information may be received directly or indirectly from the school.

Discussion: As stated in the preamble to the NPRM, a borrower's FFEL lender, or the Secretary for Direct Loans, may determine that a borrower is eligible for an in-school deferment based upon student status information received from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis. The lender or the Secretary could receive school-provided information directly, through the SSCR process of the National Student Loan Data System (NSLDS), or from a third-party servicer. Regardless of whether the lender or the Secretary receives the student status information directly or indirectly, the information must originate with the school. We agree with the commenter that the regulations should reflect the fact that student status information may be received directly or indirectly from the school.

Change: We have revised §§ 682.210(c)(1)(iii) and 685.204(b)(1)(iii)(A)(*3*) to reflect that student status information received directly or indirectly from a school may

be used to determine a borrower's in-school deferment eligibility.

Comment: A commenter representing a school supported the proposal to require notice to borrowers of their option while they are in school to pay the interest that accrues on an unsubsidized loan during an in-school deferment period or cancel the deferment entirely and pay on the loan. The commenter requested that we also require that the notice include information about the consequences of selecting those options—in particular that paying accruing interest during the deferment or paying on the loan rather than taking the deferment may result in lower total payments over the life of the loan. Another commenter representing a guaranty agency stated that the proposed regulatory language did not provide sufficient guidance to lenders about how to deal with what may appear to be due diligence gaps that may result from a borrower electing to cancel an in-school deferment that was automatically applied by the lender and then not making the required payments on the loan. The commenter noted that during the negotiated rulemaking sessions we stated that lenders were not allowed to apply an administrative forbearance in these situations and requested that we make this point more explicit in the regulations.

Discussion: We agree with the commenter that it would be helpful to borrowers if information about the consequences of the options was included in the notice sent to borrowers when an in-school deferment is applied automatically. For example, the notice should explain to borrowers that unpaid interest that accrues on their unsubsidized loans will be capitalized at the end of the deferment period and inform them that by paying the interest during the deferment period they may reduce the total amount they pay over the life of the loan.

In response to the commenter who requested that we state more explicitly how lenders should deal with possible due diligence gaps that may result from a borrower electing to cancel an in-school deferment that was automatically applied by the lender and then not making the required payments on the loan, we defer to the agreement reached by the negotiated rulemaking committee that we not regulate the action lenders must take in this situation. As discussed during negotiations, this decision seems appropriate given the infrequent nature of these situations. We expect lenders to take actions appropriate to the unique circumstances of each borrower's situation and remind lenders that we are available to provide technical assistance on a case-by-case basis should it be necessary.

Change: We have revised § 682.210(c)(2) to reflect that the notice a lender sends to a borrower when an in-school deferment is applied automatically must include an explanation of the consequences of the options presented to the borrower in the notice.

Unemployment Deferment

Comment: Several commenters responded to the Secretary's request for comment as to whether the minimum documentation items for determining a borrower's eligibility for an unemployment deferment based on the borrower's eligibility for unemployment insurance benefits should be included in the final regulations. Generally, commenters representing FFEL lenders, servicers, and guaranty agencies did not believe that minimum documentation requirements should be prescribed in regulations and supported no change to the proposed regulations. One of the commenters representing servicers stated that unless there is evidence showing that all states include certain data elements on check stubs or other types of documentation related to eligibility for unemployment insurance benefits, the final regulations should not include minimum documentation requirements. A commenter representing a guaranty agency did, however, support prescribing minimum documentation requirements in regulations provided that the requirements were developed with community involvement. Another commenter representing credit unions stated that the minimum documentation items discussed by the negotiated rulemaking committee and presented in the preamble to the NPRM appeared reasonable, but did not comment on whether the items should be prescribed in regulations.

Discussion: In response to the overwhelming support for not prescribing minimum documentation requirements in the regulations, we have decided not to make changes in the final regulations. We are basing this decision on the fact that a borrower must provide evidence of his or her eligibility for unemployment insurance benefits to his or her lender, or the Secretary for Direct Loans, in order to qualify for an unemployment deferment based on eligibility for unemployment insurance benefits. As agreed during negotiations, the evidence of a borrower's eligibility for unemployment insurance benefits must prove that the borrower is eligible to receive unemployment insurance benefits for the period for which he or she is requesting an unemployment deferment. We acknowledge that there are no uniform documentation requirements for unemployment insurance benefits. However, to fulfill the documentation requirement for the unemployment deferment, we believe that, at a minimum, the documentation should include the borrower's name, address, and social security number and the effective dates of the borrower's eligibility to receive unemployment insurance benefits.

Change: None.

Comment: Commenters representing FFEL lenders, servicers, and guaranty agencies expressed their belief that the regulatory requirement that the unemployment deferment end date be within six months of the certification date should apply regardless of whether the deferment is being granted as a result of the borrower submitting evidence of his or her eligibility for unemployment insurance benefits or as a result of the borrower submitting a written certification of eligibility (i.e., a completed unemployment deferment request form).

Discussion: We agree with the commenters. However, we note that the reference to "certification date" is not applicable if a deferment is granted based on a borrower's submission of evidence of his or her eligibility for unemployment insurance benefits. In this case, the unemployment deferment end date would be within six months of the date the borrower submits evidence of his or her eligibility for unemployment insurance benefits.

Change: We have revised § 682.210(h) to reflect that the unemployment deferment end date provision applies to both methods by which a borrower may qualify for an unemployment deferment.

Sections 682.211 and 685.205—Forbearance

Comment: Commenters representing FFEL lenders, servicers, and guaranty agencies expressed their belief that the final regulations should accurately and consistently reflect the elimination of the requirement that forbearance terms be agreed to in writing. The commenters pointed out that the requirement had been removed from § 682.211(b) but had not been removed from § 682.211(c) of the proposed regulations.

Discussion: The 1998 Amendments eliminated the requirement that the borrower's request for forbearance be in writing; however, the 1998 Amendments did not eliminate the requirement that forbearance terms be agreed to in writing. Section 428(c)(3)(A)(i) of the HEA continues to

require that forbearance terms be agreed to in writing. A forbearance changes the repayment terms on the borrower's loan and therefore needs to be agreed to in writing. The change we proposed to § 682.211(b) to remove the requirement that forbearance terms be agreed to in writing is incorrect. Both § 682.211(b) and § 682.211(c) need to accurately reflect that forbearance terms must be agreed to in writing. The only reference in the regulations to a borrower's written request for a forbearance, contained in § 682.211(h), is being deleted from the regulations.

Change: We have revised §§ 682.211(b) and (c) to accurately and consistently reflect that forbearance terms must be agreed to in writing.

Sections 682.401 and 685.402—Master Promissory Note

Comment: A commenter representing a guaranty agency requested that we change the proposed regulatory language in § 682.401(b)(5) to ensure that if a student or parent borrower does not indicate a choice of lender on the promissory note or application a lender will not be assigned automatically to the borrower. The commenter was concerned that borrowers would not be entitled to choose their lenders.

Discussion: The FFEL promissory notes and applications have always given the borrower the option to choose a lender. That option will not be impacted by the implementation of the Master Promissory Note (MPN). If a borrower does not provide a choice of lender on the promissory note, a lender will not be assigned. The borrower must work with the school to choose a lender. Section 432(m)(1)(B) of the HEA requires that the borrower be permitted to choose his or her lender.

Change: None.

Comment: A commenter representing servicers in the FFEL Program requested that we make a conforming change in § 682.401(d)(3) to reflect that under the MPN process guaranty agencies are no longer bound to the use of a common application form.

Discussion: While it is true that an application form is no longer required for Stafford loans in the FFEL Program, section 432(m)(1)(A) of the HEA retains a reference to common application forms, as well as including references to promissory notes and the MPN. We believe that the regulations should retain reference to common application forms because a common PLUS loan application remains in use until an approved MPN for PLUS loans can be developed and a common Consolidation loan application will be used indefinitely. By mirroring the statutory language in the final regulations, we believe that all possible options are covered.

Change: We have revised § 682.401(d)(3) to more closely reflect the statutory language that governs the forms guaranty agencies must use.

Comment: A commenter representing a consumer organization expressed the view that the proposed regulations related to the criteria a school must meet to be authorized to use the multi-year feature of the MPN were too broadly stated and suggested changes that included requiring the Secretary's written authorization for multi-year use of the MPN by a school. A commenter representing a two-year public institution wanted to know what other criteria the Secretary would use to approve the use of the MPN by schools other than four-year and graduate/professional schools. Another commenter representing a credit union suggested that this criteria should be the same as that used for four-year and graduate/professional schools.

Discussion: We have carefully considered the suggested language recommended by the commenter who believed that the proposed regulations governing the criteria a school must meet to be authorized to use the multi-year feature of the MPN are too broad and agree with a couple of the commenter's proposed changes. Specifically, we agree with more explicitly linking approval to use the multi-year feature of the MPN to the required criteria listed in the regulations and reinforcing the fact that the criteria are not all inclusive and will be applied, as appropriate, for the type of institution. However, we do not agree with the proposal to require the Secretary's written authorization for multi-year use of the MPN by every school.

In response to the request for information about the criteria we will use to approve the use of the MPN by schools other than four-year and graduate/professional schools, we repeat our statement in the preamble to the NPRM stating our intention to establish and announce criteria and a process that we will use after publication of these final regulations.

Change: We have revised §§ 682.401(d)(4)(ii) to more specifically link approval to use the multi-year feature of the MPN to the required criteria and reinforce the fact that the listed criteria are not all inclusive. The Direct Loan regulations already reflect these policies and do not need to be changed.

Comment: A commenter representing a consumer organization requested that we confirm that borrowers are entitled to assert a defense against repayment of any one of the loans made under an MPN. This commenter also expressed concern that the 10-year limit on the use of a single MPN established in the proposed regulations is too long a period from a consumer standpoint and requested that we change the maximum period to five years. The commenter expressed the belief that the 10-year period may serve the financial community well but does not serve young student borrowers well because they are subject to making unwise decisions, uneducated about how to cancel promissory notes, and potential targets for fraud and abuse. The commenter believed that the minimal bother of signing a new MPN after five years was far outweighed by the benefit of ensuring better borrower control of the loan process and education about the loan obligation.

Discussion: As the regulations specify, each loan made under an MPN is enforceable in accordance with the terms of the MPN. Therefore, a borrower would be entitled to assert a defense against repayment on each loan made under the MPN, based on any act or omission of a school attended by the student that would give rise to a cause of action against the school under applicable state law.

In response to the commenter's concern about the fact that an MPN may be valid for a period of up to 10 years, we agree with the commenter that ensuring borrower control of the loan process and understanding of the loan obligation are of utmost importance and that lengthy gaps in time between obtaining loans under an MPN may not always support these objectives. The Secretary is committed to monitoring use of the MPN with regard to these concerns and to evaluating options for changes to the 10-year MPN standard that is in these final regulations.

Change: None.

Comment: A commenter representing servicers in the FFEL Program requested that we change the proposed regulations to allow the 10-year MPN period to be based on either the date the borrower signs the MPN or the date the lender receives the MPN for processing if the borrower fails to date the MPN.

Discussion: We do not agree with the commenter's proposed change because we do not believe it is desirable for lenders or the Secretary to accept a signed MPN that has not been dated by the borrower. Acceptance of an MPN that has not been dated by the borrower may negatively affect the borrower and possibly threaten the legal enforceability of the MPN.

Change: None.

Comment: A commenter representing a guaranty agency noted that the proposed MPN regulatory language indicated that we have begun development of an MPN for PLUS loans and encouraged us to work with FFEL Program participants to clarify provisions and maximize benefits for borrowers. The commenter also asked if it is our intention to allow a PLUS MPN to cover all loans that a parent borrower obtains on behalf of all of that parent's dependent children or require a separate MPN for loans made on behalf of each dependent child. Another commenter representing a different guaranty agency requested that references to parent borrowers in the provisions related to the MPN in the Direct Loan Program regulations be removed until an MPN for PLUS loans is approved.

Discussion: Development of an MPN for PLUS loans has begun. To date, work groups have been involved in the initial tasks associated with developing a PLUS MPN; however, as the development expands beyond this stage, we intend that FFEL and Direct Loan program participants and other interested parties will have input into the process. We acknowledge that there are special operational considerations that need to be taken into account with an MPN for PLUS loans. As we work with program participants and others to develop the PLUS MPN, we will address issues such as the applicability of the PLUS MPN to loans made for one or more dependent children of a parent borrower. We believe that it is appropriate to include reference to parent borrowers in the regulations related to the MPN since approval of an MPN for PLUS loans will occur in the near future.

Change: None.

Comment: Commenters representing two different guaranty agencies requested changes in the proposed regulations that prescribe when an FFEL or Direct Loan program school that is not authorized by the Secretary for multi-year use of the MPN must obtain a new MPN from the borrower. One commenter suggested that the FFEL provision indicates that a borrower must complete a new promissory note for each academic year. The other commenter wanted the Direct Loan provision to indicate that a borrower must complete a new promissory note for each period of enrollment.

Discussion: In the FFEL program, loans are made in accordance with the period of enrollment certified by the school, and an MPN is defined as a promissory note under which a borrower may receive loans for a single period of enrollment or multiple periods of enrollment. Therefore, at an FFEL Program school that is not authorized by the Secretary for multi-year use of the MPN, a borrower must complete a new promissory note for each period of enrollment. In the Direct Loan Program, however, loan origination can be tracked to an academic year, and an MPN is defined as a promissory note under which a borrower may receive loans for a single academic year or multiple academic years. Therefore, at a Direct Loan Program school that is not authorized by the Secretary for multi-year use of the MPN, a borrower must complete a new promissory note for each academic year. We believe that the operational differences in the FFEL and Direct Loan programs necessitate differences in the regulations in this area.

Change: None.

Comment: We received several comments related to the confirmation process or processes that schools which are authorized to use a single MPN as the basis for multiple loans obtained by a particular borrower must develop and document along with the FFEL lender or the Secretary to ensure that a borrower wants subsequent loans made under the MPN.

Commenters representing the legal services negotiators on the negotiated rulemaking committee, a consumer organization, and a school association expressed their strong opposition to authorizing the implementation of confirmation processes that allow passive notification with a negative option (i.e., the borrower must take the initiative to reject a new loan under an MPN based on a notice) and requested that we reconsider our approval of passive confirmation processes. The commenters requested that we require confirmation processes that mandate a positive act by the borrower that, at a minimum, identifies the borrower as the initiator of the loan and confirms the type and amount of the new loan, as well as the total amount borrowed. The commenters suggested that properly implemented electronic signatures and written signatures would be acceptable confirmation methods. These commenters expressed their belief that failure to affirmatively solicit a borrower's authorization before originating new loans is an open invitation for abuse and counters the collective goal of encouraging responsible borrowing by informed students. The commenters stated that the technology necessary to develop active confirmation processes that impose a minimal burden on borrowers, schools, lenders, and the Secretary exists, and in some cases (i.e.; PIN numbers), has been in use for 20 years. The commenters also suggested that the legal enforceability of loans made using the multi-year feature of the MPN without active confirmation processes may be questioned in the future when courts will be faced with whether to permit enforcing collection of loans that were neither actively requested nor clearly and affirmatively confirmed by the borrower.

A commenter representing servicers in the FFEL Program requested that we clarify that schools and lenders may utilize passive confirmation (i.e., notification) until such time as the proper processes and systems enhancements can be made by schools and lenders to implement active confirmation processes. Another commenter representing a school suggested that we practice restraint in the area of confirmation. This commenter stated that requiring confirmation once a year should be sufficient since borrowers always have the option of canceling or returning all or a portion of a loan.

Discussion: We are aware that there are strong differing views related to the implementation of the confirmation process required by statute that schools and lenders or the Secretary must develop and document to ensure that a borrower wants subsequent loans under an MPN. We also acknowledge the concerns of the commenters representing consumers regarding confirmation processes that do not require a positive action by a borrower to obtain subsequent loans under the MPN. While we do not agree necessarily that the legal enforceability of loans made in connection with a confirmation process that does not require a positive action by the borrower could be open to challenge, it is the Secretary's goal to maintain and enhance a borrower's control over the lending process in the MPN environment. To achieve this goal, we would like to reiterate our intention to work with students, schools, lenders, guaranty agencies, and other interested parties to develop and implement confirmation processes that make use of the best available technology in order to maintain and enhance borrower control over the lending process, at the same time minimizing burden to schools and lenders. While it is true that much of the technology needed to develop enhanced borrower-control mechanisms exists today; lenders, schools, servicers, and the Department need time to evaluate and determine how best to integrate available technologies into the current student loan delivery systems and procedures. Shortly after these final

regulations are published, we will begin discussions with the affected parties to meet these goals.

At this time, lenders and schools may follow the guidance in the Department's Dear Colleague Letters—GEN–98–25, November 1998 and GEN–99–08, February 1999—in developing and documenting confirmation processes. As technologies that enhance borrower control over the lending process are developed or adapted for implementation, and different methods of confirmation are tested, we will continue to issue guidance regarding confirmation processes. Any guidelines will be issued in accordance with applicable requirements of the Administrative Procedure Act. As stated in the preamble to the NPRM, after evaluating various confirmation processes, it is our ultimate plan to develop regulations governing confirmation processes.

Change: None.

Sections 682.402 and 685.215—Unpaid Refund Discharge

Comment: One commenter representing a guaranty agency suggested that the use of the term "initial determination" in the provision that describes the additional documentation a borrower must provide when requesting a review of a guaranty agency's determination on an unpaid refund discharge request could be problematic if the borrower appeals the guaranty agency's decision more than once. The commenter believed that the wording of the proposed regulation could leave a guaranty agency vulnerable to repeatedly having to examine the same documentation submitted on second and subsequent appeals. The commenter requested that we change the term "initial determination" to "any prior determination" to clarify that in all cases a borrower may only appeal a determination when the borrower has new documentation that was not previously reviewed by the guaranty agency.

Discussion: We agree with the commenter.

Change: We have revised § 682.402(l)(5)(vii)(A) to reflect that a borrower may request a review of a guaranty agency's prior determination on an unpaid refund discharge request only if the borrower has additional documentation supporting the borrower's eligibility that was not considered in any prior determination.

Comment: None.

Discussion: We have identified an inadvertent omission in the provisions governing how a guaranty agency or the Secretary would determine the amount eligible for discharge in cases in which information showing the exact refund amount that was not made by the school or the refund formula that should have been used by the school to calculate a refund is not available. The guaranty agency or the Secretary would use one of two surrogate formulas to calculate the amount eligible for discharge depending on when the student failed to attend, withdrew, or was terminated. In the proposed regulations, both surrogate formulas neglected to take into account that, according to refund policy, borrowers who completed 60 percent or more of the loan period would not have been entitled to a refund and in turn would not be eligible for an unpaid refund discharge.

Change: We have revised §§ 682.402(o)(2) and 685.215(d)(2) to correctly reflect in the surrogate formulas used to determine discharge amounts that borrowers who completed 60 percent or more of the loan period would not be eligible for an unpaid refund discharge.

Sections 682.603, 682.604, 685.301, and 685.303—Disbursement Exemptions

Comment: Commenters representing FFEL guaranty agencies suggested that we change the proposed regulations to reflect that a school must cease to certify or originate loans based on authorized cohort default rate related disbursement exemptions no later than 30 days after the date the school receives notification that the school does not meet the qualifications for the exemptions rather than 30 days after the date the school is notified that it does not meet the qualifications for the exemptions. The commenters believe that the phrase "receives notification" is preferable to the phrase "is notified" because it eliminates issues of timing.

Discussion: In either case, schools would have more than ample time within which to comply with the provision. However, making the change the commenters requested would be consistent with the regulations in § 668.17 governing cohort default rates and which use the date the school receives the notification.

Change: We have revised §§ 682.603(g), 685.301(b)(8)(ii), and 685.303(b)(4)(ii) to reflect that a school must cease to certify or originate loans based on authorized cohort default rate related disbursement exemptions no later than 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to longer meet the qualifications for the exemptions.

Comment: One commenter representing a guaranty agency requested that we clarify what we mean by the term "study abroad program" in the provisions describing the disbursement exemptions that apply to schools certifying or originating loans to cover a student's cost of attendance in a study abroad program. Another commenter representing FFEL servicers suggested that we change the term "postsecondary home school" to "home institution." The commenter stated that the term "home school," even in conjunction with the term "postsecondary," is misleading and suggested that we use the term "home institution" because it has a long established meaning for purposes of student financial assistance in connection with approved study abroad programs in § 682.207(b)(1)(v)(C). A third commenter representing a higher education association that promotes study abroad programs stated that there is confusion over the applicability of the disbursement exemptions for schools certifying or originating loans to cover the cost of attendance in study abroad programs. Specifically, the commenter requested that we clarify that schools certifying or originating loans to cover the cost of attendance in study abroad programs may qualify for disbursement exemptions under either of the two cohort default rate criteria included in the proposed regulations.

Discussion: The disbursement exemption provisions govern all participating schools that meet specific criteria. Included under these provisions are schools certifying or originating loans to cover the cost of attendance for students participating in study abroad programs. As pointed out by one of the commenters, these schools have been consistently referred to in regulations as "home institutions." Students in study abroad programs complete a portion or portions of their study in a country other than the United States.

The commenter representing a higher education association that promotes study abroad programs is correct that a school that is a home institution certifying or originating a loan to cover the cost of attendance in a study abroad program may qualify for the multiple disbursement and delayed disbursement or delivery exemptions based on either of the two cohort default rate criteria included in the proposed regulations. Under the multiple disbursement exemption, the school would be eligible to disburse loan proceeds in one installment if—

• The loan period is equal to or shorter than one semester, one trimester, one quarter, or, for nonterm-based schools or schools that use non-standard terms, four months; and

• The school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available.

Additionally, the school would be eligible to disburse loan proceeds in one installment to cover the cost of attendance in a study abroad program for a loan period of any length if the school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available.

Under the exemption for delayed delivery or for disbursement for first-year, first-time borrowers, a school certifying or originating a loan to cover the cost of attendance in a study abroad program may deliver or disburse loan proceeds to first-year, first-time borrowers without a 30-day delay if—

• The school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available; or

• The school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available.

Change: We have revised §§ 682.604(c)(5), 682.604(c)(10), 685.301(b)(8)(i)(B), and 685.303(b)(4)(i)(B) to reflect consistent use of the term "home institution" when referring to a school certifying or originating a loan to cover a student's cost of attendance in a study abroad program.

Comment: To be consistent with statutory language, commenters representing guaranty agencies recommended that we replace the term "loan period" with the term "enrollment period" in the regulation that specifies the conditions for an exemption to the multiple disbursement requirement for schools with an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available. Another commenter representing a guaranty agency suggested that we clarify in the same provision that the reference to a loan period that is four months in length applies only to non term-based schools.

Discussion: While the commenters are correct that statute uses the term "enrollment period," we have used the term "loan period" to be consistent with the wording in the other provisions of the FFEL and Direct Loan program regulations into which this provision has been added and therefore, decline to make the commenters' suggested change. We also note that the terms "enrollment period" and "loan period" are interchangeable.

We agree with the suggestion that we clarify that loan periods that are four months or less in length apply in the case of non term-based schools. We also note that this provision would apply to schools that use non-standard terms.

Change: We have revised §§ 682.604(c)(10)(i)(A) and 685.301(b)(8)(i)(A)(*1*) to reflect that loan periods that are four months or less in length apply in the case of non term-based schools and schools that use non-standard terms.

Sections 682.604 and 685.304—Counseling Borrowers

Comment: A commenter representing a guaranty agency requested that the proposed regulations be changed to reflect that schools are not required to conduct exit counseling with all student borrowers. The commenter maintained that only student borrowers who have a loan or loans entering repayment when the borrower ceases at least half-time enrollment are required to complete exit counseling and that borrowers who return to school but do not receive a new loan or loans are not subject to required exit counseling. This same commenter also suggested that the final regulations should allow a school to conduct exit counseling by mail at the request of a student borrower. The commenter believed that such a provision would accommodate student borrowers who know in advance that they will not be able to fulfill the exit counseling requirement.

Discussion: The commenter is correct in pointing out that there may be student borrowers in a school's population who reenroll in school after they have entered repayment on their subsidized and unsubsidized loans, and who do not obtain new subsidized and unsubsidized loans. While it's true that these student borrowers already have entered repayment on their subsidized and unsubsidized loans, we believe that it would be beneficial for most student borrowers in this position to complete exit counseling again because they would receive up-to-date repayment information and refresh their knowledge about options such as forbearance, deferment, and consolidation. However, we acknowledge that it may not be possible for schools to identify these student borrowers. We believe that the regulations offer the flexibility to permit schools that can identify these student borrowers and choose to require exit counseling for these borrowers to do so.

We do not agree with the commenter's suggestion that schools should be allowed to mail counseling materials to student borrowers at their request. While we appreciate that attending an in-person exit counseling session may be difficult for some student borrowers, we believe that allowing them the option to forgo participating in exit counseling conducted by their schools in person, by audiovisual presentation, or by interactive electronic means conflicts with the statute. The variety of authorized exit counseling methods provides schools with the necessary flexibility to accommodate the specific needs of their student population and meet the statutory requirements. Further, an alternative to conducting exit counseling in person, by audiovisual presentation, or by interactive electronic means is allowed for two categories of student borrowers who generally may not be able to complete exit counseling through one of the authorized methods. Schools may mail written counseling materials to student borrowers who are enrolled in a correspondence program or a study-abroad program approved for credit at the home institution. Schools also may provide exit counseling either through interactive electronic means or by mailing written counseling materials to student borrowers who withdraw without a school's knowledge or who fail to complete the exit counseling.

Change: None.

Comment: We received several comments related to schools providing exit counseling through interactive electronic means. One commenter representing a school requested that we reexamine the requirement that counseling through electronic means be interactive. The commenter believed that this was a very high standard and expressed uncertainty as to how electronically the school could ensure that the student borrower did anything more than open the message. This same commenter also requested that we explain what we mean by "electronic receipt" and questioned its necessity when a receipt is not required if a school sends counseling materials via U.S. mail. Another commenter representing a school recommended that student borrowers should have some allowance for errors in the final evaluation of whether or not they have successfully completed exit counseling

through interactive electronic means. A third commenter representing another school suggested that we should provide web-based exit counseling for FFEL and Direct Loan program borrowers that would be linked to the NSLDS. In the commenter's proposal, student borrowers would benefit by being presented with a more complete and accurate picture of their total loan indebtedness and borrowers and schools would benefit by being relieved of the burdens of completing, collecting, and submitting the required personal data.

Discussion: As we discussed in the preamble to the NPRM, we purposely did not prescribe specific electronic means by which schools can provide initial and exit counseling to FFEL and Direct Loan program borrowers. During negotiated rulemaking, committee members representing schools pointed out that there were many different electronic means that schools could use to provide counseling and that new and improved electronic means are continually becoming available. At the same time, the committee agreed that it was important to ensure that the quality of the counseling that schools provide to student borrowers is enhanced rather than diminished by advancing technology. For these reasons, the proposed regulations specified that the electronic means a school uses to provide initial and exit counseling must be interactive, which at a minimum, requires a school to take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the counseling.

We believe that electronic counseling is equivalent to counseling that a school conducts in person—it is not equivalent to mailing written counseling materials, which is authorized as an alternative only in specific situations. Therefore, we do not consider it sufficient simply to ensure that the student borrower received and "opened" an electronic message that contained loan counseling materials. At the same time, we do not want to dictate to schools how they must design their electronic counseling so as to fulfill the regulatory requirement that the counseling be interactive other than to say that, by definition, the term "interactive" implies that feedback is provided by the student borrower at some point or points during the course of the counseling.

In response to the questions about electronic receipts, we would like to clarify that any time a school conducts initial and exit counseling by interactive electronic means, the school's documentation that it fulfilled the initial and exit counseling requirements for each student borrower must include proof that the borrower received the materials. As stated in the preamble to the NPRM, this does not mean that the school must receive a personal response from the student borrower. Instead, the school can accept an automatic electronic response acknowledging that the materials were received by the person to whom they were addressed. These automatic electronic responses, often called "receipts," are a feature of most electronic mail systems and are returned automatically to the sender when the recipient receives the message. As discussed during negotiated rulemaking, it is necessary to require proof that the student borrower received the materials sent electronically because, unlike materials sent via U.S. mail, there is no basic legal assumption that materials sent via electronic mail are delivered to the person to whom the materials were addressed.

We appreciate the interesting proposal for improving electronic exit counseling submitted by one of the school commenters. As we work to improve and integrate our systems, as well as service to our customers, we will consider the commenter's proposal that we provide web-based exit counseling for FFEL and Direct Loan program borrowers that would be linked to NSLDS.

Change: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations on pages 43438 and 43439 in the preamble to the NPRM.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.032, Federal Family Education Loan Program, and 84.268, William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising parts 682 and 685 as follows:

PART—682 FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.100 [Amended]

2. Section 682.100 paragraph (a)(2) is amended by removing "encourages", and by adding, in its place, "encouraged"; in paragraph (a)(4) by removing "other loans, including loans:,", and by adding, in its place, "loans"; by removing "and" before "Nursing"; and by adding "including Loans for Disadvantaged Students (LDS)", after "(HPSL)".

3. Section 682.100 paragraph (b)(2)(C) is amended by removing the semi-colon before "as".

4. Section 682.102 paragraph (a) is revised; paragraph (b) is removed and reserved; paragraph (d) is revised; and the Office of Management and Budget control number is revised to read as follows:

§ 682.102 Obtaining and repaying a loan.

(a) *Stafford loan application.* Generally, to obtain a Stafford loan a student requests a loan by completing the Free Application for Federal Student Aid (FAFSA), or contacting the school, lender or guarantor. The school determines and certifies the student's eligibility for the loan. Prior to loan disbursement, the lender obtains a loan guarantee from a guaranty agency or the Secretary and the student completes a promissory note, unless the student has previously completed a Master Promissory Note (MPN) that the lender may use for the new loan.

(b) [Reserved]

* * * * *

(d) *Consolidation loan application.* To obtain a Consolidation loan, a borrower completes an application and submits it to the lender holding the borrower's FFEL Program loan or loans. If the borrower has multiple holders of FFEL Program loans, or if the borrower's single loan holder declines to make a Consolidation loan, or declines to make one with income-sensitive repayment terms, the borrower may submit the application to any lender participating in the Consolidation Loan Program. In the case of a married couple seeking a Consolidation loan, if at least one of the applicants has multiple holders, the applicants may submit the application to any lender participating in the Consolidation Loan Program. If both applicants have a single holder, only the holder for one of the applicants must be contacted for consolidation. If a lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

§ 682.103 [Amended]

5. Section 682.103 paragraph (a) is amended by removing the first use of the term "programs".

6. Section 682.200(b) is amended as follows:

A. By amending the definitions of *Default* by revising paragraphs (1) and (2); *Estimated financial assistance* by revising paragraphs (1)(i), (2)(i)(B) and (C), and (2)(ii) and by adding (2)(iii).

B. By revising the definition of *Holder.*

C. In the definition of "Lender," by revising paragraph (5)(i) and by renumbering the second paragraph (5) as paragraph (6).

D. By adding a new definition "Master promissory note (MPN)" in alphabetical order.

E. In the definition of "Repayment period," in paragraph (1), by adding ",or 25 years under an extended repayment schedule,", after "10 years"; in paragraph (2), by adding "or 25 years under an extended repayment schedule,", after "10 years"; in paragraph (4), by adding ", or 25 years under an extended repayment schedule", after "10 years".

F. By adding the Office of Management and Budget control number.

§ 682.200 Definitions.

* * * * *

(b) * * *

Default.

* * * * *

(1) 270 days for a loan repayable in monthly installments; or

(2) 330 days for a loan repayable in less frequent installments.

* * * * *

Estimated financial assistance.

(1) * * *

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 and veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

* * * * *

(2) * * *

(i) * * *

(A) * * *

(B) PLUS loan amounts; and

(C) Private and state-sponsored loan programs;

(ii) Federal Perkins loan and Federal Work-Study funds that the school determines the student has declined; and

(iii) For the purpose of determining eligibility for a subsidized Stafford loan, veterans' educational benefits paid under chapter 30 of title 38 of the United States Code (Montgomery GI Bill—Active Duty) and national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

* * * * *

Holder. An eligible lender owning an FFEL Program loan including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

* * * * *

Lender.

* * * * *

(5) * * *

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any school or other party to secure applicants for FFEL loans, except that a lender is not prohibited from providing assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program.

* * * * *

Master promissory note (MPN). A promissory note under which the borrower may receive loans for a single period of enrollment or multiple periods of enrollment.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

7. Section 682.201 is amended as follows:

A. By revising paragraph (a)(2).

B. By revising paragraph (c)(1); in paragraph (c)(2)(iii) by removing "(c)(1)(vi)", and by adding in its place, "(c)(1)(iv)"; and by removing paragraphs (c)(3) and (c)(4).

C. By adding a new paragraph (d).

D. By adding a new paragraph (e).

§ 682.201 Eligible borrowers.

(a) * * *

(2) In the case of any student who seeks an unsubsidized Stafford loan for

the cost of attendance at a school that participates in the Stafford Loan Program, the student must—

(i) Receive a determination of need for a subsidized Stafford loan; and

(ii) If the determination of need is in excess of $200, have made a request to a lender for a subsidized Stafford loan;

* * * * *

(c) *Consolidation program borrower.* (1) An individual is eligible to receive a Consolidation loan if the individual—

(i) On the loans being consolidated—

(A) Is, at the time of application for a Consolidation loan—

(*1*) In a grace period preceding repayment;

(*2*) In repayment status;

(*3*) In a default status and has either made satisfactory repayment arrangements as defined in applicable program regulations or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in § 682.209(a)(7)(viii);

(B) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(C) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted;

(ii) Certifies that no other application for a Consolidation loan is pending;

(iii) Agrees to notify the holder of any changes in address; and

(iv)(A) Certifies that the lender holds at least one outstanding loan that is being consolidated; or

(B) Applies to any eligible consolidation lender if the borrower—

(*1*) Has multiple holders of FFEL loans; or

(*2*) Has been unable to receive from the holder of the borrower's outstanding loans, a Consolidation loan or a Consolidation loan with income-sensitive repayment.

* * * * *

(d) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except that—

(1) Eligible loans received prior to the date a Consolidation loan was made and loans received during the 180-day period following the date a Consolidation loan was made, may be added to the Consolidation loan based on the borrower's request received by the lender during the 180-day period after the date the Consolidation loan was made;

(2) A borrower who receives an eligible loan after the date a Consolidation loan is made may receive a subsequent Consolidation loan; and

(3) A Consolidation loan borrower may consolidate an existing Consolidation loan only if the borrower has at least one other eligible loan made before or after the existing Consolidation loan that will be consolidated.

(e) In the case of a married couple, the loans of a spouse that are to be included in a Consolidation loan are considered eligible loans for the other spouse.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, and 1091)

8. Section 682.202 is amended as follows:

A. In paragraph (a)(1)(i) by removing "If" and by adding, in its place, "For loans made prior to July 1, 1994, if,".

B. In paragraph (a)(1)(ii)(B) by adding "and prior to July 1, 1994," after "October 1, 1992".

C. In paragraph (a)(1)(iii)(A) by removing "evidencing the loan".

D. In paragraph (a)(1)(iv) by adding "but before December 20, 1993," after "October 1, 1992".

E. By adding new paragraphs (a)(1)(v) through (a)(1)(viii).

F. In paragraph (a)(2)(iii) introductory text, by adding "and prior to July 1, 1994," after "October 1, 1992".

G. By adding new paragraphs (a)(2)(iv) and (a)(2)(v).

H. In paragraph (a)(4) by adding "(i)" at the beginning of the sentence before "A Consolidation", by adding "made before July 1, 1994" after "loan", by designating paragraph "(i)" as "(A)", by designating paragraph "(ii)" as "(B)", by adding new paragraphs (a)(4)(ii) through (a)(4)(v).

I. In paragraph (b)(1), by removing "paragraph (b)(2) of"; and by revising paragraph (b)(2).

J. In paragraph (b)(3) by removing ", except that capitalization", and by adding in its place, ". Capitalization".

K. By removing paragraph (b)(5).

L. By redesignating paragraph (b)(4) as paragraph (b)(5); and by adding a new paragraph (b)(4).

M. By revising the newly redesignated paragraph (b)(5).

N. By revising paragraphs (c)(1) and (c)(2).

O. By redesignating paragraphs (c)(3) through (c)(5) as paragraphs (c)(5) through (c)(7); and by adding new paragraphs (c)(3) and (c)(4).

P. In redesignated paragraph (c)(5), by removing, "an SLS or".

§ 682.202 Permissible charges by lenders to borrowers.

(a) * * *

(1) * * *

(v) For a Stafford loan for which the first disbursement is made on or after December 20, 1993 and prior to July 1, 1994, if the borrower, on the date the promissory note is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is the rate provided in paragraph (a)(1)(ii)(B) of this section.

(vi) For a Stafford loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1995, for a period of enrollment that includes or begins on or after July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10; or

(B) 8.25 percent.

(vii) For a Stafford loan for which the first disbursement is made on or after July 1, 1995 and prior to July 1, 1998 the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 2.5 percent during the in-school, grace and deferment period and 3.10 percent during repayment; or

(B) 8.25 percent.

(viii) For a Stafford loan for which the first disbursement is made on or after July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period plus 1.7 percent during the in-school, grace and deferment periods and 2.3 percent during repayment; or

(B) 8.25 percent.

* * * * *

(2) * * *

(iv) For a loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1998, the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

(v) For a loan for which the first disbursement is made on or after July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

* * * * *

(4) * * *

(ii) A Consolidation loan made on or after July 1, 1994, for which the loan application was received by the lender before November 13, 1997, bears interest at the rate that is equal to the weighted average of interest rates on the loans consolidated, rounded upward to the nearest whole percent.

(iii) For a Consolidation loan for which the loan application was received by the lender on or after November 13, 1997 and before October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held prior to June 1 of each year plus 3.10 percent; or

(B) 8.25 percent.

(iv) For a Consolidation loan for which the application was received by the lender on or after October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a fixed rate that is the lesser of—

(A) The weighted average of interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or

(B) 8.25 percent.

(v) For a Consolidation loan for which the application was received by the lender on or after November 13, 1997, the annual interest rate applicable to the portion of each consolidation loan that repaid HEAL loans is a variable rate adjusted annually on July 1 and must be equal to the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending June 30, plus 3 percent. There is no maximum rate on this portion of the loan.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(4) of this section, a lender may capitalize interest payable by the borrower that has accrued—

(i) For the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) For the in-school or grace periods, or for a period needed to align repayment of an SLS with a Stafford loan, if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) For a period of authorized deferment;

(iv) For a period of authorized forbearance; or

(v) For the period from the date the first installment payment was due until it was made.

* * * * *

(4)(i) For unsubsidized Stafford loans disbursed on or after October 7, 1998 and prior to July 1, 2000, the lender may capitalize the unpaid interest that accrues on the loan according to the requirements of section 428H(e)(2) of the Act.

(ii) For Stafford loans first disbursed on or after July 1, 2000, the lender may capitalize the unpaid interest—

(A) When the loan enters repayment;

(B) At the expiration of a period of authorized deferment;

(C) At the expiration of a period of authorized forbearance; and

(D) When the borrower defaults.

(5) For any borrower in an in-school or grace period or the period needed to align repayment, deferment, or forbearance status, during which the Secretary does not pay interest benefits and for which the borrower has agreed to make payments of interest, the lender may capitalize past due interest provided that the lender has notified the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Fees for FFEL Program loans.*

(1) A lender may charge a borrower an origination fee on a Stafford loan not to exceed 3 percent of the principal amount of the loan. Except as provided in paragraph (c)(2) of this section, a lender must charge all borrowers the same origination fee.

(2)(i) A lender may charge a lower origination fee than the amount specified in paragraph (c)(1) of this section to a borrower whose expected family contribution (EFC), used to determine eligibility for the loan, is equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified or to a borrower who qualifies for a subsidized Stafford loan. A lender must charge all such borrowers the same origination fee.

(ii) With the approval of the Secretary, a lender may use a standard comparable to that defined in paragraph (c)(2)(i) of this section.

(3) If a lender charges a lower origination fee on unsubsidized loans under paragraph (c)(1) or (c)(2) of this section, the lender must charge the same fee on subsidized loans.

(4)(i) For purposes of this paragraph (c), a lender is defined as:

(A) All entities under common ownership, including ownership by a common holding company, that make loans to borrowers in a particular state; and

(B) Any beneficial owner of loans that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf in a particular state.

(ii) If a lender as defined in paragraph(c)(4)(i) charges a lower origination fee to any borrower in a particular state under paragraphs (c)(1) or (c)(2) of this section, the lender must charge all such borrowers who reside in that state or attend school in that state the same origination fee.

* * * * *

9. Section 682.204 is amended as follows:

A. By revising paragraphs (a), (b), (c), (d), and (e).

B. In paragraph (f)(2)(i) by adding "the following", after "exceed".

C. In paragraph (f)(2)(ii) by adding "the following" after "exceed".

D. In paragraph (f)(2)(ii)(B) by removing "and", and by adding, in its place, "or".

E. In paragraph (j), by removing the first "or" before "HEAL".

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $2,625 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,625 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks in program}}{\text{Number of weeks in academic year.}}$$

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $3,500 for a program whose length is at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $3,500 as the—

$$\frac{\text{Number of semester, trimester, quarter or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $5,500 for a program whose length is at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Stafford Loan Program, in combination with any amount borrowed under the Federal Direct Stafford/Ford Loan Program, may not exceed $8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or certificate, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed $5,500.

(b) *Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Stafford Loan Program loans in combination with loans received by the student under the Federal Direct Stafford/Ford Loan Program, but excluding the amount of capitalized interest may not exceed the following:

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level.

(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Unsubsidized Stafford Loan Program.* (1) In the case of a dependent undergraduate student, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program.

(2) In the case of an independent undergraduate student, a graduate or

professional student, or certain dependent undergraduate students, the total amount the student may borrow for any period of enrollment under the Unsubsidized Stafford Loan and Federal Direct Unsubsidized Stafford/Ford Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program, in combination with the amounts determined under paragraph (d) of this section.

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* In addition to any amount borrowed under paragraphs (a) and (c) of this section, an independent undergraduate student, graduate or professional student, and certain dependent undergraduate students may borrow additional amounts under the Unsubsidized Stafford Loan Program. The additional amount that such a student may borrow under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program, in addition to the amounts allowed under paragraphs (b) and (c) of this section for any academic year of study—

(1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, may not exceed the following:

(i) $4,000 for a program of study of at least a full academic year.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $4,000 as the lesser of—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education may not exceed the following:

(i) $4,000 for a program of study of at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of a student who has successfully completed the second year of a program of undergraduate education, but has not completed the remainder of the program, may not exceed the following:

(i) $5,000 for a program of study of at least a full academic year.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (d)(3) of this section.

(5) In the case of a graduate or professional student, may not exceed $10,000.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate may not exceed the following:

(i) $4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,000 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(iii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in a program necessary for a professional credential or a certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000.

(e) *Combined Federal Stafford, SLS and Federal Unsubsidized Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of Stafford Loans, Federal Direct Stafford/Ford Loans, Unsubsidized Stafford Loans, Federal Direct Unsubsidized Stafford/Ford Loans and SLS Loans, but

excluding the amount of capitalized interest, may not exceed the following:

(1) $46,000 for an undergraduate student.

(2) $138,500 for a graduate or professional student.

* * * * *

10. Section 682.206 is amended as follows:

A. By revising paragraph (a)(1).

B. By removing "on the application form or data electronically transmitted to the lender" in paragraph (c)(1).

C. By revising paragraph (c)(2).

D. By removing paragraph (c)(3).

E. By revising paragraph (d)(1).

F. By revising the Office of Management and Budget control number.

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) Loan-making duties include determining the borrower's loan amount, approving the borrower for a loan, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note (except with respect to subsequent loans made under an MPN).

* * * * *

(c) * * *

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, in no case may the loan amount exceed the lesser of the amount the borrower requests, the amount certified by the school under § 682.603, or the loan limits under § 682.204.

* * * * *

(d)(1) The lender must ensure that each loan is supported by an executed legally-enforceable promissory note as proof of the borrower's indebtedness.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

11. Section 682.207 is amended as follows:

A. In paragraph (b)(1)(v)(B)(*3*), by removing "eligible institution", and by adding, in its place, "institution of higher education".

B. By revising the introductory sentence in paragraph (c).

C. By removing paragraph (c)(5).

D. By redesignating paragraph (c)(4) as paragraph (d).

E. By redesignating paragraph (d) as paragraph (f).

F. By adding a new paragraph (e).

G. By revising the newly redesignated paragraph (f).

H. By revising the Office of Management and Budget control number.

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) Except as provided in paragraph (e) of this section, a lender must disburse any Stafford or PLUS loan in accordance with the disbursement schedule provided by the school as follows:

* * * * *

(e) A lender must disburse the loan in one installment if the school submits a schedule for disbursement of loan proceeds in one installment as authorized by § 682.604(c)(10).

(f)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis only if—

(i) The school certified the borrower's loan eligibility before the date the student became ineligible and the loan funds will be used to pay educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible;

(ii) The student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in § 682.604(c)(5); and (iii) In the case of a second or subsequent disbursement, the student graduated or successfully completed the period of enrollment for which the loan was intended.

(2) The lender must give notice to the school that the loan proceeds have been disbursed in accordance with paragraph (f)(1) of this section at the time the lender sends the loan proceeds to the school.

(Approved by the Office of Management and Budget under control number 1845–0020)

12. Section 682.209 is amended as follows:

A. By revising paragraph (a)(4).

B. By redesignating paragraphs (a)(6), (a)(7), and (a)(8) as paragraphs (a)(7), (a)(8), and (a)(9), respectively.

C. By adding a new paragraph (a)(6).

D. In the newly redesignated paragraph (a)(7)(i)(B), by removing "Sec. 682.211(j)(5)", and adding, in its place, "§ 682.211(i)(5)".

E. By revising the newly redesignated paragraph (a)(7)(iii).

F. In the newly redesignated paragraph (a)(7)(v), by removing "(a)(6)(vi)" and adding, in its place, "(a)(7)(vi)".

G. In newly redesignated paragraph (a)(7)(v)(A) by removing "income-sensitive or a graduated repayment", and adding, in its place, "income-sensitive, a graduated, or if applicable, an extended repayment".

H. In the newly redesignated paragraph (a)(7)(v)(B), by removing "(a)(6)(viii)(C)", and adding, in its place, "(a)(7)(viii)(C)".

I. In the newly redesignated paragraph (a)(7)(vii)(A)(*2*), by removing, "(a)(6)(i)", and by adding, in its place, "(a)(7)(i)".

J. In newly redesignated paragraph (a)(7)(viii)(A)(*2*), and by removing "(a)(6)(i)", and by adding, in its place, "(a)(7)(i)".

K. In newly redesignated paragraph (a)(7)(viii)(D), by removing "Sec. § 682.211(j)(5)", and by adding, in its place, "§ 682.211(i)(5)".

L. In newly redesignated paragraph (a)(7)(viii)(E), by removing "(a)(7)", and by adding, in its place, "(a)(8)".

M. By redesignating paragraph (a)(7)(ix) as paragraph (a)(7)(xi).

N. By adding new paragraphs (a)(7)(ix) and (x).

O. In the newly redesignated paragraph (a)(8)(i), by removing "(a)(7)(ii)", and by adding, in its place "(a)(8)(ii)"; by adding, "and except as provided in paragraph (a)(7)(ix)", after "section,"; by adding, "or 25 years under an extended repayment plan" after "10 years,".

P. In newly redesignated paragraph "(a)(8)(ii)", by removing "and 15-year", and by adding, in its place, "15- and 25-year".

Q. In the newly redesignated paragraph "(a)(8)(iv)", by removing "(a)(7)(iii)", and by adding, in its place, "(a)(8)(iii)".

R. By revising paragraph (c)(1)(i).

S. In paragraph (e)(2)(i), by adding, "as appropriate" after "(3)(ii)".

T. In paragraph (e)(2)(ii), by removing "(a)(7)(i)", and adding, in its place, "(a)(8)(i)".

U. In paragraph (f)(2)(ii), by removing "(a)(7)(i)", and adding, in its place, "(a)(8)(i)".

V. By removing paragraph (h)(3); by redesignating paragraphs (h)(4), (h)(5), and (h)(6), as paragraphs (h)(3), (h)(4), and (h)(5), respectively; by revising the newly redesignated paragraph (h)(3); and by removing redesignated paragraph (h)(4)(ii) and redesignating paragraph (h)(4)(iii) as paragraph (h)(4)(ii).

W. By revising the Office of Management and Budget control number.

§ 682.209 Repayment of a loan.

(a) * * *

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3)(i) of this section begins on the earliest of—

(i) The day after the borrower completes the program;

(ii) The day after withdrawal as determined pursuant to 34 CFR 668.22; or

(iii) 60 days following the last day for completing the program as established by the school.

* * * * *

(6) For purposes of establishing the beginning of the repayment period for Stafford and SLS loans, the grace periods referenced in paragraphs (a)(2)(iii) and (a)(3)(i) of this section exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Stafford or SLS borrower who is in a grace period when called or ordered to active duty as specified in this paragraph is entitled to a full grace period upon completion of the excluded period.

(7) * * *

(iii) Not more than six months prior to the date that the borrower's first payment is due, the lender must offer the borrower a choice of a standard, income-sensitive, graduated, or, if applicable, an extended repayment schedule.

* * * * *

(ix) Under an extended repayment schedule, a new borrower whose total outstanding principal and interest in FFEL loans exceed $30,000 may repay the loan on a fixed annual repayment amount or a graduated repayment amount for a period that may not exceed 25 years. For purposes of this section, a "new borrower" is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of October 7, 1998, or on the date he or she obtains an FFEL Program loan after October 7, 1998.

(x) A borrower may request a change in the repayment schedule on a loan. The lender must permit the borrower to change the repayment schedule no less frequently than annually.

* * * * *

(c) *Minimum annual payment.* (1)(i) Subject to paragraph (c)(1)(ii) of this section and except as otherwise provided by a graduated, income-sensitive, or extended repayment plan selected by the borrower, during each year of the repayment period, a borrower's total payments to all holders of the borrower's FFEL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

* * * * *

(h) * * *

(3) For the purpose of paragraph (h)(2) of this section, the unpaid balance on other student loans—

(i) May not exceed the amount of the Consolidation loan; and

(ii) With the exception of the defaulted title IV loans on which the borrower has made satisfactory repayment arrangements with the holder of the loan, does not include the unpaid balance on any defaulted loans.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

13. Section 682.210 is amended as follows:

A. By revising paragraphs (a)(3), (a)(4), and (a)(6)(iv); in paragraph (a)(7) by removing "180- or 240-day" and adding, in its place, "270- or 330-day".

B. In paragraph (b)(1)(i), by removing "(c)(4)" and adding, in its place, "(c)(5)".

C. By revising paragraph (b)(4).

D. By revising the heading in paragraph (c); by revising paragraph (c)(1); by redesignating paragraphs (c)(2) through (c)(4) as paragraphs (c)(3) through (c)(5), respectively; and by adding a new paragraph (c)(2).

E. By revising redesignated paragraph (c)(3).

F. In redesignated paragraph (c)(4) by removing, "Stafford, SLS or PLUS" both times it appears and adding, in its place, "FFEL", by removing "the", before "certified", and by adding, in its place, "a", and by removing "a student", and by adding, in its place, "an in-school".

G. In redesignated paragraph (c)(5), by adding "or a PLUS (unless based on the dependent's status)" after "Stafford,".

H. By revising paragraph (h).

I. In paragraph (s)(2), by removing the heading, "Student deferment", and by adding, in its place, "In-school deferment".

J. By revising the Office of Management and Budget control number.

§ 682.210 Deferment.

(a) * * *

(3) Interest accrues and is paid by the borrower during the deferment period and the post-deferment grace period, if applicable, unless interest accrues and is paid by the Secretary for a Stafford loan and for all or a portion of a qualifying Consolidation loan that meets the requirements under § 682.301.

(4) As a condition for receiving a deferment, except for purposes of paragraphs (c)(1)(ii) and (iii) of this section, the borrower must request the deferment, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

* * * * *

(6) * * *

(iv) In the case of an in-school deferment, the student's anticipated graduation date as certified by an authorized official of the school; or

* * * * *

(b) * * *

(4) For a "new borrower," as defined in paragraph (b)(7) of this section, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

* * * * *

(c) *In-school deferment.* (1) Except as provided in paragraph (c)(5) of this section, the lender processes a deferment for full-time study or half-time study at a school, when—

(i) The borrower submits a request and supporting documentation for a deferment;

(ii) The lender receives information from the borrower's school about the borrower's eligibility in connection with a new loan; or

(iii) The lender receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower's enrollment status supports eligibility for a deferment.

(2) The lender must notify the borrower that a deferment has been granted based on paragraph (c)(1)(ii) or (iii) of this section and that the borrower has the option to pay interest that accrues on an unsubsidized FFEL Program loan or to cancel the deferment and continue paying on the loan. The lender must include in the notice an explanation of the consequences of these options.

(3) The lender must consider a deferment granted on the basis of a certified loan application or other information certified by the school to cover the period lasting until the anticipated graduation date appearing on the application, and as updated by notice or SSCR update to the lender from the school or guaranty agency, unless and until it receives notice that the borrower has ceased the level of study (*i.e.*, full-time or half-time) required for the deferment.

* * * * *

(h) *Unemployment deferment.* (1) A borrower qualifies for an unemployment deferment by providing evidence of eligibility for unemployment benefits to the lender.

(2) A borrower also qualifies for an unemployment deferment by providing to the lender a written certification—

(i) Describing the borrower's conscientious search for full-time employment during the preceding six months, except in the case of the initial period of unemployment, including, for each of at least six attempts to secure employment to support the period covered by the certification—

(A) The name of the employer contacted;

(B) The employer's address and phone number; and

(C) The name or title of the person contacted;

(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower's permanent or temporary address, specifying the agency's name and address and date of registration.

(3) For purposes of obtaining an unemployment deferment under paragraph (h)(2) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(iv) A lender may accept, as an alternative to the certification of employer contacts required under paragraph (h)(2)(i) of this section, comparable documentation the borrower has used to meet the requirements of the Unemployment Insurance Service, if it shows the same number of contacts and contains the same information the borrower would be required to provide under this section.

(4) A lender may not grant a deferment based on a single certification under paragraph (h)(1) or (h)(2) of this section beyond the date that is six months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (h)(1) of this section or the date the borrower provides the written certification under paragraph (h)(2) of this section.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

14. Section 682.211 is amended as follows:

A. By revising paragraph (a)(4);

B. In paragraph (c) by adding, "the terms of" after "writing to".

C. By adding a new paragraph (f)(9).

D. In paragraphs (h)(l) and (h)(2), by removing the word "written".

E. By removing paragraph (h)(2)(ii)(B) and designating paragraph (h)(2)(ii)(C) as paragraph (h)(2)(ii)(B).

F. By removing paragraph (h)(3)(ii); by redesignating paragraph (h)(3)(iii) as paragraph (h)(3)(ii); and in redesignated paragraph (h)(3)(ii), by removing "(h)(2)(ii)(C)", and by adding, in its place "(h)(2)(ii)(B)".

G. By revising the Office of Management and Budget control number.

§ 682.211 Forbearance.

(a) * * *

(4) Except as provided in paragraph (f)(9) of this section, if payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

* * * * *

(f) * * *

(9) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

15. Section 682.300 is amended by revising paragraph (a) to read as follows:

§ 682.300 Payments of interest benefits on Stafford and Consolidation loans.

(a) *General.* The Secretary pays a lender, on behalf of a borrower, a portion of the interest on a subsidized Stafford loan and on all or a portion of a qualifying Consolidation loan that meets the requirements under § 682.301. This payment is known as interest benefits.

* * * * *

16. Section 682.301 is amended as follows:

A. By revising paragraph (a)(3).

B. By removing paragraph (a)(4).

C. By revising paragraphs (b) and (c).

D. By revising the Office of Management and Budget control number.

§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

(a) * * *

(3) A Consolidation loan borrower qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans if the loan application was received by the lender—

(i) On or after January 1, 1993 but prior to August 10, 1993;

(ii) On or after August 10, 1993, but prior to November 13, 1997 if the loan consolidates only subsidized Stafford loans; and

(iii) On or after November 13, 1997, for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a statement to the lender pursuant to § 682.603. The student must qualify for interest benefits if the eligible institution has determined and documented the student's amount of need for a loan based on the student's estimated cost of attendance, estimated financial assistance, and expected family contribution as determined under part F of the Act.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a PLUS, unsubsidized Stafford loan, State sponsored loan, or private program loan obtained for a period of enrollment to replace the expected family contribution for that period of enrollment.

(Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

17. Section 682.401 is amended as follows:

A. By revising paragraphs (b)(5)(i) and (ii).

B. In the heading in paragraph (b)(15), by removing "Guarantee", and by adding, in its place, "Guaranty".

C. In paragraph (b)(24), by adding a comma after "shall".

D. By revising paragraph (d)(3).

E. By designating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively.

F. By adding a new paragraph (d)(4).

G. By revising the Office of Management and Budget control number.

§ 682.401 Basic program agreement.

* * * * *.

(b) * * *

(5) *Borrower responsibilities.* (i) The borrower must indicate his or her

preferred lender on the promissory note or other written or electronic documentation submitted during the loan origination process if he or she has such a preference.

(ii) The borrower must give the lender, as part of the promissory note or application process for a Stafford or PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(C) Information from the school providing the maximum amount that may be borrowed by or on behalf of the student.

* * * * *

(d) * * *

(3) The guaranty agency must use common application forms, promissory notes, Master Promissory Notes (MPN), and other common forms approved by the Secretary.

(4)(i) The Secretary authorizes the use of the multi-year feature of the MPN—

(A) For students and parents for attendance at four-year or graduate/professional schools; and

(B) For students and parents for attendance at other institutions meeting criteria or otherwise designated at the sole discretion of the Secretary.

(ii) The Secretary may prohibit use of the multi-year feature of the MPN at specific schools described under paragraph (4)(i) of this section under circumstances including, but not limited to, the school being subject to an emergency action or a limitation, suspension, or termination action, or not meeting other performance criteria determined by the Secretary.

(iii) A borrower attending a school for which the multi-year feature of the MPN has not been authorized must complete a new promissory note for each period of enrollment.

(iv) Each loan made under an MPN is enforceable in accordance with the terms of the MPN and is eligible for claim payment based on a true and exact copy of such MPN.

(v) A lender's ability to make additional loans under an MPN will automatically expire upon the earliest of—

(A) The date the lender receives written notification from the borrower requesting that the MPN no longer be used as the basis for additional loans;

(B) Twelve months after the date the borrower signed the MPN if no disbursements are issued by the lender under that MPN; or

(C) Ten years from the date the borrower signed the MPN or the date the lender receives the MPN. However, if a portion of a loan is made on or before 10 years from the signature date, remaining disbursements of that loan may be made.

(vi) The lender and school must develop and document a confirmation process in accordance with guidelines established by the Secretary for loans made under the multi-year feature of the MPN.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

18. Section 682.402 is amended as follows:

A. By revising the section heading; by revising paragraph (a)(1); in paragraph (a)(3), by adding "and as provided in paragraph (h)(1)(iv) of this section," before "only".

B. In paragraph (f)(1) by removing "(f) through (m)", and adding, in its place, "(h) through (k)"; by revising paragraph (f)(3); in paragraph (f)(5)(i)(B) by adding "before October 8, 1998" after "Code".

C. By revising paragraphs (g)(1)(i) and (ii).

D. In paragraph (h)(1)(i), by removing "paragraph (g)", and adding, in its place, "paragraph (h)"; by adding a new paragraph (h)(1)(iv).

E. By revising paragraph (i)(1); and by removing paragraph (i)(3) in its entirety.

F. In paragraph (j)(1)(ii), by removing "(B)"; and by revising paragraph (j)(1)(iii).

G. By revising paragraph (k)(1)(i)(A).

H. By redesignating paragraphs (l) and (m) as paragraphs (r) and (s); and by adding new paragraphs (l) through (q).

I. By revising the Office of Management and Budget control number.

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) *General.* (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, false certification by a school of a borrower's eligibility for a loan, and unpaid refunds by a school are set forth in this section.

* * * * *

(f) * * *

(3) *Determination of filing.* The lender must determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other proof of filing provided by the debtor's attorney or the bankruptcy court.

* * * * *

(g) * * *

(1) * * *

(i) The original promissory note or a copy of the promissory note certified by the lender as true and accurate.

(ii) The loan application, if a separate loan application was provided to the lender.

* * * * *

(h) * * *

(1) * * *

(iv) In reviewing a claim under this section, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of the confirmation process or processes, insurance benefits must be repaid.

* * * * *

(i) *Guaranty agency participation in bankruptcy proceedings*—(1) *Undue hardship claims.* (i) In response to a petition filed prior to October 8, 1998 with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8) on the grounds of undue hardship, the guaranty agency must, on the basis of reasonably available information, determine whether the first payment on the loan was due more than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of that petition and, if so, process the claim.

(ii) In all other cases, the guaranty agency must determine whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(iii) If the guaranty agency determines that repayment would not constitute an undue hardship, the guaranty agency must then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.

(iv) The guaranty agency must use diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. Unless discharge would be more effectively opposed by not taking the following actions, the agency must—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(v) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, a guaranty agency may agree to discharge of a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

* * * * *

(j) * * *

(1) * * *

(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8) on grounds of undue hardship.

* * * * *

(k) * * *

(1) * * *

(i) * * *

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8) with respect to a proceeding initiated under chapter 7 or chapter 11; or

* * * * *

(l) *Unpaid refund discharge.*

(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary reimburses the guarantor of a loan and discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL Program loan (disbursed on or after January 1, 1986) equal to the refund that should have been made by the school under applicable Federal law and regulations, including this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.* In the case of a school that is open, the guarantor discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL loan (disbursed on or after January 1, 1986) equal to the amount of the refund that should have been made by the school under applicable Federal law and regulations, including this section, if—

(i) The borrower (or the student on whose behalf a parent borrowed) has ceased to attend the school that owes the refund; and

(ii) The guarantor receives documentation regarding the refund and the borrower and guarantor have been unable to resolve the unpaid refund within 120 days from the date the borrower submits a complete application in accordance with paragraph (l)(4) of this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the amount of the unpaid refund amount are also discharged.

(3) *Relief to borrower (and any endorser) following discharge.* (i) If a borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest, late charges, collection costs, origination fees, and insurance premiums) owed by the borrower at the time of discharge.

(ii) The holder of the loan reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the holder of the loan previously reported the status of the loan.

(4) *Borrower qualification for discharge.* To receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the holder or guaranty agency except as provided in paragraph (l)(5)(iv) of this section. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan on or after January 1, 1986 to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as a holder of a performance bond or a tuition recovery program.

(ii) State whether the borrower has any other application for discharge pending for this loan; and

(iii) State that the borrower—

(A) Agrees to provide upon request by the Secretary or the Secretary's designee other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for an unpaid refund discharge under this section; and

(B) Agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (d) of this section.

(5) *Unpaid refund discharge procedures.* (i) Except for the requirements of paragraph (l)(5)(iv) of this section related to an open school, if the holder or guaranty agency learns that a school did not pay a refund of loan proceeds owed under applicable law and regulations, the holder or the guaranty agency sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan.

(ii) If the borrower returns the application, specified in paragraph (l)(4) of this section, the holder or the guaranty agency must review the application to determine whether the application appears to be complete. In the case of a loan held by a lender, once the lender determines that the application appears complete, it must provide the application and all pertinent information to the guaranty agency including, if available, the borrower's last date of attendance. If the borrower returns the application within 60 days, the lender must extend the period during which efforts to collect on the affected loan are suspended to the date the lender receives either a denial of the request or the unpaid refund amount from the guaranty agency. At the conclusion of the period during which the collection activity was suspended, the lender may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iii) If the borrower fails to return the application within 60 days, the holder of the loan resumes collection efforts and grants forbearance of principal and interest for the period during which the collection activity was suspended. The holder may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iv) The guaranty agency may, with the approval of the Secretary, discharge a portion of a loan under this section without an application if the guaranty agency determines, based on information in the guaranty agency's possession, that the borrower qualifies for a discharge.

(v) If the holder of the loan or the guaranty agency determines that the information contained in its files

conflicts with the information provided by the borrower, the guaranty agency must use the most reliable information available to it to determine eligibility for and the appropriate payment of the refund amount.

(vi) If the holder of the loan is the guaranty agency and the agency determines that the borrower qualifies for a discharge of an unpaid refund, the guaranty agency must suspend any efforts to collect on the affected loan and, within 30 days of its determination, discharge the appropriate amount and inform the borrower of its determination. Absent documentation of the exact amount of refund due the borrower, the guaranty agency must calculate the amount of the unpaid refund using the unpaid refund calculation defined in paragraph (o) of this section.

(vii) If the guaranty agency determines that a borrower does not qualify for an unpaid refund discharge, (or, if the holder is the lender and is informed by the guarantor that the borrower does not qualify for a discharge)—

(A) The agency must notify the borrower in writing of the reason for the determination and of the borrower's right to request a review of the agency's determination within 30 days of the borrower's submission of additional documentation supporting the borrower's eligibility that was not considered in any prior determination. During the review period, collection activities must be suspended; and

(B) The holder must resume collection if the determination remains unchanged and grant forbearance of principal and interest for the period during which collection activity was suspended. The holder may capitalize any interest accrued and not paid during the review period in accordance with § 682.202(b).

(viii) If the guaranty agency determines that a current or former borrower at an open school may be eligible for a discharge under this section, the guaranty agency must notify the lender and the school of the unpaid refund allegation. The notice to the school must include all pertinent facts available to the guaranty agency regarding the alleged unpaid refund. The school must, no later than 60 days after receiving the notice, provide the guaranty agency with documentation demonstrating, to the satisfaction of the guarantor, that the alleged unpaid refund was either paid or not required to be paid.

(ix) In the case of a school that does not make a refund or provide sufficient documentation demonstrating the refund was either paid or was not required, within 60 days of its receipt of the allegation notice from the guaranty agency, relief is provided to the borrower (and any endorser) if the guaranty agency determines the relief is appropriate. The agency must forward documentation of the school's failure to pay the unpaid refund to the Secretary.

(m) *Unpaid refund discharge procedures for a loan held by a lender.* In the case of an unpaid refund discharge request, the lender must provide the guaranty agency with documentation related to the borrower's qualification for discharge as specified in paragraph (l)(4) of this section.

(n) *Payment of an unpaid refund discharge request by a guaranty agency.* (1) *General.* The guaranty agency must review an unpaid refund discharge request promptly and must pay the lender the amount of loss as defined in paragraphs (l)(1) and (l)(2) of this section, related to the unpaid refund not later than 45 days after a properly filed request is made.

(2) *Determination of the unpaid refund discharge amount to the lender.* The amount of loss payable to a lender on an unpaid refund includes that portion of an FFEL Program loan equal to the amount of the refund required under applicable Federal law and regulations, including this section, and including any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund.

(o)(1) *Determination of amount eligible for discharge.* The guaranty agency determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the guaranty agency. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (o)(1) of this section is not available, the guaranty agency uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the lesser of the institutional charges unearned or the loan amount. The guaranty agency determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the loan amount unearned. The guaranty agency determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or if unknown, the loan amount.

(iii) In the case of a student who completes 60 percent or more of the loan period, the guaranty agency does not discharge any amount because a student who completes 60 percent or more of the loan period is not entitled to a refund.

(p) *Requests for reimbursement from the Secretary on loans held by guaranty agencies.* The Secretary reimburses the guaranty agency for its losses on unpaid refund request payments to lenders or borrowers in an amount that is equal to the amount specified in paragraph (n)(2) of this section.

(q) *Payments received after the guaranty agency's payment of an unpaid refund request.* (1) The holder must promptly return to the sender any payment on a fully discharged loan, received after the guaranty agency pays an unpaid refund request unless the sender is required to pay (as in the case of a tuition recovery fund) in which case, the payment amount must be forwarded to the Secretary. At the same time that the holder returns the payment, it must notify the borrower that there is no obligation to repay a loan fully discharged.

(2) If the holder has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (q)(1) of this section, and the borrower (or representative) continues to send payments to the holder, the holder must remit all of those payments to the Secretary.

(3) If the loan has not been fully discharged, payments must be applied to the remaining debt.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

19. Section 682.406 is amended by revising paragraph (a)(12); by adding a

new paragraph (c); and by revising the Office of Management and Budget control number to read as follows:

§ 682.406 Conditions of reinsurance coverage.

(a) * * *

(12) The agency and lender, if applicable, complied with all other Federal requirements with respect to the loan including—

(i) Payment of origination fees;

(ii) For Consolidation loans disbursed on or after October 1, 1993, and prior to October 1, 1998, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 1.05 percent of the unpaid principal and accrued interest on the loan;

(iii) For Consolidation loans for which the application was received by the lender on or after October 1, 1998 and prior to February 1, 1999, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 0.62 percent of the unpaid principal and accrued interest on the loan;

(iv) For Consolidation loans disbursed on or after February 1, 1999, payment of an interest payment rebate fee in accordance with paragraph (a)(12)(ii) of this section; and

(v) Compliance with all preclaims assistance requirements in § 682.404(a)(2)(ii).

* * * * *

(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of a confirmation process or processes, insurance and reinsurance benefits must be repaid.

(Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

20. Section 682.409 is amended as follows:

A. By revising paragraph (c)(2).

B. In paragraph (c)(4)(i) by adding "original or a true and exact copy of the" after "The".

C. In paragraph (c)(4)(iv) by adding ", if a separate application was provided to the lender", after "application".

D. In paragraph (c)(5) by removing "certified", and by removing "if no originals exist".

E. By revising the Office of Management and Budget control number.

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

* * * * *

(c) * * *

(2) The guaranty agency must execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section. If more than one loan is made under an MPN, the assignment of the note only applies to the loan or loans being assigned to the Secretary.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

21. Section 682.414 is amended as follows:

A. In paragraph (a)(4)(ii)(A) by adding "if a separate application was provided to the lender" after "application".

B. In paragraph (a)(4)(ii)(B) by removing ", including the repayment instrument" after "note".

C. In paragraph (a)(4)(ii)(J) by removing "and" at the end of sentence.

D. By redesignating paragraph (a)(4)(ii)(K) as paragraph (a)(4)(ii)(L).

E. By adding a new paragraph (a)(4)(ii)(K).

F. In paragraph (a)(5)(i) by removing "(K)", and adding, in its place, "(L)".

G. By revising paragraph (a)(5)(ii).

H. By removing paragraph (a)(5)(iii).

I. By revising the Office of Management and Budget control number.

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(4) * * *

(ii) * * *

(K) Documentation of any MPN confirmation process or processes; and

* * * * *

(5) * * *

(ii) A lender or guaranty agency holding a promissory note must retain the original or a true and exact copy of the promissory note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency must return either the original or a true and exact copy of the note to the borrower or notify the borrower that the loan is paid in full, and retain a copy for the prescribed period.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

22. Section 682.603 is amended as follows:

A. By revising paragraph (b).

B. By adding a new paragraph (c).

C. By redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively.

D. By adding a new paragraph (g).

E. By revising the Office of Management and Budget control number.

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with § 682.201 and § 682.204;

(2) For a subsidized Stafford loan, the student's eligibility for interest benefits as determined in accordance with § 682.301; and

(3) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in § 682.604(c).

(c) Except as provided in paragraph (e) of this section, in certifying a loan, a school must certify a loan for the lesser of the borrower's request or the loan limits determined under § 682.204.

* * * * *

(g) A school must cease certifying loans based on the exceptions in § 682.604(c)(5)(i) and (c)(5)(ii) and § 682.604(c)(10)(i) and (ii) that allow for the disbursement of loans in one installment and exempt the school from delayed release of loan proceeds no later than 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to no longer meet the qualifications outlined in those paragraphs.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

23. Section 682.604 is amended as follows:

A. In paragraph (a)(3), by removing, ", as provided in § 668.167" at the end of the sentence.

B. In paragraph (c)(3), by adding, or "MPN", after "loan application".

C. By revising paragraph (c)(5).

D. By revising the introductory text of paragraph (c)(6).

E. By adding a new paragraph (c)(10).

F. By revising paragraphs (f) and (g).

G. By revising the Office of Management and Budget control number.

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(5) A school may not release the first installment of a Stafford loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford, SLS, Direct Subsidized, or Direct Unsubsidized loan until 30 days after the first day of the student's program of study unless—

(i) The school in which the student is enrolled has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(ii) The school is an eligible home institution certifying a loan to cover the student's cost of attendance in a study abroad program and has an FFEL cohort rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(iii) The school is not in a State.

(6) Unless the provision of § 682.207(d) applies—

* * * * *

(10) Notwithstanding the requirements of paragraphs (c)(6)–(c)(9) of this section, a school is not required to deliver loan proceeds in more than one installment if—

(i)(A) The student's loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(B) The school in which the student is enrolled has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(ii) The school is an eligible home institution certifying a loan to cover the student's cost of attendance in a study abroad program and has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(iii) The school is not in a State.

* * * * *

(f) *Initial counseling.* (1) A school must conduct initial counseling with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means prior to its release of the first disbursement, unless the student borrower has received a prior Stafford, SLS, or Direct loan. A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the school may provide the counseling through written materials, prior to releasing those loan proceeds.

(2) In conducting the initial counseling, the school must—

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the student borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iv) In the case of a student borrower of a Stafford loan (other than a loan made or originated by the school), emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) A school that conducts initial counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

(5) A school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(g) *Exit counseling.* (1) A school must conduct exit counseling with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must conduct this counseling shortly before the student borrower ceases at least half-time study at the school. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, the school may provide written counseling materials by mail within 30 days after the student borrower completes the program. If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must provide exit counseling through either interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) In conducting the exit counseling, the school must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Stafford or SLS loans for attendance at that school or in the student borrower's program of study;

(ii) Review for the student borrower available repayment options (e.g., loan consolidation, refinancing of SLS loans);

(iii) Suggest to the student borrower debt-management strategies that the school determines would best assist repayment by the student borrower;

(iv) Include the matters described in paragraph (f)(2) of this section;

(v) Review with the student borrower the conditions under which the student borrower may defer repayment or obtain a full or partial cancellation of a loan;

(vi) Require the student borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer, that will then be provided within 60 days to the guaranty agency or agencies listed in the student borrower's records; and

(vii) Review with the student borrower information on the availability of the Student Loan Ombudsman's office.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) A school that conducts exit counseling by electronic interactive means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

(5) The school must maintain documentation substantiating the

school's compliance with this section for each student borrower.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

24. Section 682.610 is amended by revising paragraph (b) and the Office of Management and Budget control number to read as follows:

§ 682.610 Administrative and fiscal requirements for participating schools.

* * * * *

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school must maintain—

(1) A copy of the loan certification or data electronically submitted to the lender, that includes the amount of the loan and the period of enrollment for which the loan was intended;

(2) The cost of attendance, estimated financial assistance, and estimated family contribution used to calculate the loan amount;

(3) For loans delivered to the school by check, the date the school endorsed each loan check, if required;

(4) The date or dates of delivery of the loan proceeds by the school to the student or to the parent borrower;

(5) For loans delivered by electronic funds transfer or master check, a copy of the borrower's written authorization required under § 682.604(c)(3) to deliver the initial and subsequent disbursements of each FFEL program loan; and

(6) Documentation of any MPN confirmation process or processes the school may have used.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0020)

25. Sections 682.205, 682.208, 682.214, 682.405, 682.410, 682.411, 682.507, 682.508, 682.511, 682.515, 682.601, 682.605, 682.711, 682.712, 682.713, 682.802, and 682.803 are amended by revising the Office of Management and Budget control number to read "1845–0020".

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

26. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

27. Section 685.102 is amended in paragraph (b) as follows:

A. By revising the definitions of "Default" and "Estimated financial assistance."

B. By adding after "Loan fee" a new definition of "Master promissory note (MPN)."

§ 685.102 Definitions.

* * * * *

(b) * * *

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for 270 days.

Estimated financial assistance: (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as scholarships, grants, financial need-based employment, or loans, including but not limited to—

(i) Except as provided in paragraph (2)(iii) of this definition, veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, campus-based aid, and the gross amount (including fees) of a Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loan; and

(viii) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

(2) Estimated financial assistance does not include—

(i) Those amounts used to replace the expected family contribution, including—

(A) Direct PLUS Loan amounts;

(B) Direct Unsubsidized Loan amounts; and (C) Non-Federal loan amounts;

(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined; and

(iii) For the purpose of determining eligibility for a Direct Subsidized Loan, veterans' educational benefits paid under chapter 30 of title 38 of the United States Code (Montgomery GI Bill—Active Duty) and national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

* * * * *

Master promissory note (MPN): A promissory note under which the borrower may receive loans for a single academic year or multiple academic years. Loans for multiple academic years may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement except that a remaining portion of a loan may be disbursed after this date.

* * * * *

28. Section 685.201 is revised to read as follows:

§ 685.201 Obtaining a loan.

(a) *Application for a Direct Subsidized Loan or a Direct Unsubsidized Loan.* (1) To obtain a Direct Subsidized Loan or a Direct Unsubsidized Loan, a student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled must perform specific functions. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions:

(i) A school participating under school origination option 2 must create a loan origination record, ensure that the loan is supported by a completed Master Promissory Note (MPN), draw down funds, and disburse the funds to the student.

(ii) A school participating under school origination option 1 must create a loan origination record, ensure that the loan is supported by a completed MPN, and transmit the record and MPN (if required) to the Servicer. The Servicer initiates the drawdown of funds. The school must disburse the funds to the student.

(iii) If the student is attending a school participating under standard

origination, the school must create a loan origination record and transmit the record to the alternative originator, which either confirms that a completed MPN supports the loan or prepares an MPN and sends it to the student. The Servicer receives the completed MPN from the student (if required) and initiates the drawdown of funds. The school must disburse the funds to the student.

(b) *Application for a Direct PLUS Loan.* To obtain a Direct PLUS Loan, the parent must complete the application and promissory note and submit it to the school at which the student is enrolled. The school must complete its portion of the application and promissory note and submit it to the Servicer, which makes a determination as to whether the parent has an adverse credit history. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions: A school participating under school origination option 2 must draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

(c) *Application for a Direct Consolidation Loan*

(1) To obtain a Direct Consolidation Loan, the applicant must complete the application and promissory note and submit it to the Servicer. The application and promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Servicer. The Servicer answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

(2) Once the applicant has submitted the completed application and promissory note to the Servicer, the Secretary makes the Direct Consolidation Loan under the procedures specified in § 685.216.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

29. Section 685.203 is amended by revising paragraphs (a) and (c)(2); and by revising the introductory text of paragraphs (d) and (e) to read as follows:

§ 685.203 Loan limits.

(a) *Direct Subsidized Loans.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $2,625 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,625 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $3,500 for a program of study of at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $3,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $5,500 for a program of study of at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $5,500.

* * * * *

(c) * * *

(2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Federal Direct Unsubsidized Stafford/Ford Loan Program and the Federal Unsubsidized Stafford Loan Program for any academic year of study may not exceed the following:

(i) In the case of a student who has not successfully completed the first year of a program of undergraduate education—

(A) $4,000 for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(C) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(D) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $4,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(ii) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education—

(A) $4,000 for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) In the case of a student who has successfully completed the second year of a program of undergraduate education but has not completed the remainder of the program of study—

(A) $5,000 for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,000 as the—

Number of semester, trimester, quarter, or clock hours enrolled
Number of semester, trimester, quarter, or clock hours in academic year.

(iv) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (c)(2)(iii) of this section.

(v) In the case of a graduate or professional student, $10,000.

(vi) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate—

(A) $4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(B) $5,000 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(vii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000.

(d) *Federal Direct Stafford/Ford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Federal Stafford Loans made to a student but excluding the amount of capitalized interest may not exceed the following:

* * * * *

(e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Federal Unsubsidized Stafford Loans, and Federal SLS Loans but excluding the amount of capitalized interest may not exceed the following:

* * * * *

30. Section 685.204 is amended by adding a new paragraph (b)(1)(iii) and revising the Office of Management and Budget control number to read as follows:

§ 685.204 Deferment.

* * * * *

(b) * * *

(1) * * *

(iii)(A) For the purpose of paragraph (b)(1)(i) of this section, the Secretary processes a deferment when—

(*1*) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(*2*) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan; or

(*3*) The Secretary receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis.

(B)(*1*) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(*2*) or (*3*) of this section, the borrower has the option to continue paying on the loan.

(*2*) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0021)

31. Section 685.205 is amended as follows:

A. By revising the introductory text of paragraph (a); by removing the "period" at the end of paragraph (a)(2) and adding, in its place, ";"; by revising paragraph (a)(4); and by removing paragraph (a)(5) and redesignating paragraph (a)(6) as paragraph (a)(5).

B. By revising paragraph (b)(6); by removing "or" at the end of paragraph (b)(7); by removing the "period" at the end of paragraph (b)(8) and adding, in its place, "; or"; and by adding a new paragraph (b)(9).

§ 685.205 Forbearance.

(a) *General.* "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. Except as provided in paragraph (b)(9) of this section, if payments of interest are forborne, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and—

* * * * *

(4) The borrower is serving in a national service position for which the borrower is receiving a national service education award under title I of the National and Community Service Act of 1990; or

* * * * *

(b) * * *

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under § 685.213;

(ii) Under § 685.214;

(iii) Under § 685.215; or

(iv) Due to the borrower's or endorser's (if applicable) bankruptcy;

* * * * *

(9) A period of up to 60 days necessary for the Secretary to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized.

* * * * *

32. Section 685.207 is amended as follows:

A. By redesignating paragraph (b)(2)(ii) as paragraph (b)(2)(iii).

B. By adding a new paragraph (b)(2)(ii).

C. By revising the redesignated paragraph (b)(2)(iii).

D. By redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii).

E. By adding a new paragraph (c)(2)(ii).

§ 685.207 Obligation to repay.

* * * * *

(b) * * *

(2) * * *

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the six-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (b)(2)(ii)(A) of this section is entitled to a full six-month grace period upon completion of the excluded period.

(iii) During a grace period, the borrower is not required to make any principal payments on a Direct Subsidized Loan.

* * * * *

(c) * * *
(2) * * *
(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the six-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (c)(2)(ii)(A) of this section is entitled to a full six-month grace period upon completion of the excluded period.

* * * * *

33. Section 685.212 is amended by revising paragraphs (d), (e), (f), and (g); and by revising the Office of Management and Budget control number to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(d) *Closed schools.* If a borrower meets the requirements in § 685.213, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(e) *False certification and unauthorized disbursement.* If a borrower meets the requirements in § 685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(f) *Unpaid refunds.* If a borrower meets the requirements in § 685.215, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the amount of the loan equal to the unpaid refund and any accrued interest and other charges associated with the unpaid refund. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the unpaid refund owed on any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(g) *Payments received after eligibility for discharge.* (1) *For the discharge conditions in paragraphs (a)–(e) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, those payments received after the date that the eligibility requirements for discharge were met but prior to the date the discharge was approved. The Secretary also returns any payments received after the date the discharge was approved.

(2) *For the discharge condition in paragraph (f) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender payments received in excess of the amount owed on the loan after applying the unpaid refund.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

34. Section 685.215 is redesignated as § 685.216, a new § 685.215 is added to read as follows:

§ 685.215 Unpaid refund discharge.

(a)(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.*

(i) In the case of a school that is open, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section, if—

(A) The borrower (or the student on whose behalf a parent borrowed) has ceased to attend the school that owes the refund;

(B) The borrower has been unable to resolve the unpaid refund with the school; and

(C) The Secretary is unable to resolve the unpaid refund with the school within 120 days from the date the borrower submits a complete application in accordance with paragraph (c)(1) of this section regarding the unpaid refund. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(ii) For the purpose of paragraph (a)(2)(i)(C) of this section, within 60 days of the date notified by the Secretary, the school must submit to the Secretary documentation demonstrating that the refund was made by the school or that the refund was not required to be made by the school.

(b) *Relief to borrower following discharge.* (1) If the borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest and other charges) owed by the borrower at the time of discharge.

(2) The Secretary reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* (1) Except as provided in paragraph (c)(2) of this section, to receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the Secretary. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan on or after January 1, 1986 to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as the holder of a performance bond or a tuition recovery program;

(ii) State whether the borrower (or student) has any other application for discharge pending for this loan; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions as described in § 685.213(d) and to transfer any right to recovery against a third party to the Secretary as described in § 685.213(e).

(2) The Secretary may discharge a portion of a loan under this section without an application if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

(d) *Determination of amount eligible for discharge.*

(1) The Secretary determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the Secretary. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (d)(1) of this section is not available, the Secretary uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000 and who completes less than 60 percent of the loan period, the Secretary discharges the lesser of the institutional charges unearned or the loan amount. The Secretary determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000 and who completes less than 60 percent of the loan period, the Secretary discharges the loan amount unearned. The Secretary determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or, if unknown, the loan amount.

(iii) In the case of a student who completes 60 percent or more of the loan period, the Secretary does not discharge any amount because a student who completes 60 percent or more of the loan period is not entitled to a refund.

(e) *Discharge procedures.* (1) Except as provided in paragraph (c)(2) of this section, if the Secretary learns that a school did not make a refund of loan proceeds owed under applicable law and regulations, the Secretary sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If a borrower who is sent a discharge application fails to submit the application within 60 days of the Secretary's sending the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If a borrower qualifies for a discharge, the Secretary notifies the borrower in writing. The Secretary resumes collection and grants forbearance of principal and interest on the portion of the loan not discharged for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(4) If a borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of the reasons for the determination. The Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

35. The newly redesignated § 685.216 is amended by revising paragraphs (d), (g), (l)(1), (l)(2), and (l)(3); and by revising the Office of Management and Budget control number to read as follows:

§ 685.216 Consolidation.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(E) In default but has made satisfactory repayment arrangements, as defined in applicable program regulations, on the defaulted loan; or

* * * * *

(g) *Interest rate.* The interest rate on a Direct Subsidized Consolidation Loan or a Direct Unsubsidized Consolidation Loan is the rate established in § 685.202(a)(3)(i). The interest rate on a Direct PLUS Consolidation Loan is the rate established in § 685.202(a)(3)(ii).

* * * * *

(l) * * *

(1) *Deferment.* To obtain a deferment on a joint Direct Consolidation Loan under § 685.204, both borrowers must meet the requirements of that section.

(2) *Forbearance.* To obtain forbearance on a joint Direct Consolidation Loan under § 685.205, both borrowers must meet the requirements of that section.

(3) *Discharge.* (i) To obtain a discharge of a joint Direct Consolidation Loan under § 685.212, each borrower must meet the requirements for one of the types of discharge described in that section.

(ii) If a borrower meets the requirements for discharge under § 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan and the borrower's spouse does not meet the requirements for any type of discharge described in § 685.212, the Secretary discharges a portion of the consolidation loan equal to the amount of the loan that would have been eligible for discharge under the provisions of § 685.212(d), (e), or (f) as applicable.

(Approved by the Office of Management and Budget under control number 1845–0021)

36. Section 685.300 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) * * *

(1) * * *

(ii) Enter into a written program participation agreement with the Secretary that identifies the loan program or programs in which the school chooses to participate.

* * * * *

37. Section 685.301 is amended by revising paragraphs (b)(2), (b)(3), (b)(8), and (c)(2); and by revising the Office of Management and Budget control number to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(b) * * *

(2) Unless paragraph (b)(5) or (6) of this section applies, an institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (b)(4), (5), (6), or (8) of this section applies—

* * * * *

(8)(i) A school is not required to make more than one disbursement if—

(A)(*1*) The loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(*2*) The school has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

(ii) Paragraphs (b)(8)(i)(A) and (B) of this section, which allow the disbursement of loans in one installment, do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to no longer meet the qualifications outlined in those paragraphs.

* * * * *

(c) * * *

(2) A school that originates a loan must ensure that the loan is supported by a completed promissory note as proof of the borrower's indebtedness.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0021)

38. Section 685.303 is amended by revising paragraph (b)(4) to read as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

(4)(i) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Federal Stafford, Federal Supplemental Loans for Students, Direct Subsidized, or Direct Unsubsidized Loan, a school may not disburse the proceeds of a Direct Subsidized or Direct Unsubsidized Loan until 30 days after the first day of the student's program of study unless—

(A) The school has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

(ii) Paragraphs (b)(4)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate that causes the school to no longer meet the qualifications outlined in those paragraphs.

* * * * *

39. Section 685.304 is amended as follows:

A. By revising paragraphs (a)(1), (a)(2), and (a)(3) introductory text; by redesignating paragraphs (a)(3)(i)-(iv) as paragraphs (a)(3)(ii)-(v), respectively; by adding a new paragraph (a)(3)(i); by revising newly redesignated paragraphs (a)(3)(ii), (iv), and (v); by revising paragraphs (a)(5)(i) and (ii); and by adding new paragraphs (a)(6) and (a)(7).

B. By redesignating paragraphs (b)(1)(ii), (b)(2) introductory text, (b)(2)(i) through (vi); (b)(2)(vii), (b)(3), and (b)(4) as paragraphs (b)(3), (b)(4) introductory text, (b)(4)(i) through (vi), (b)(4)(viii), (b)(5), and (b)(7), respectively; by revising paragraph (b)(1) and newly redesignated paragraphs (b)(3), (b)(4) introductory text, (b)(4)(i) through (viii), and (b)(7); and by adding new paragraphs (b)(2), (b)(4)(vii), and (b)(6).

C. By adding the Office of Management and Budget control number.

§ 685.304 Counseling borrowers.

(a) *Initial counseling.* (1) Except as provided in paragraph (a)(5) of this section, a school must conduct initial counseling prior to making the first disbursement of the proceeds of a Direct Subsidized or Direct Unsubsidized Loan to a borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, Federal Unsubsidized Stafford, or Federal SLS Loan.

(2) The counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with knowledge of the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the school may provide the student borrower with written counseling materials prior to disbursing the loan proceeds.

(3) In conducting the initial counseling, the school must—

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

* * * * *

(iv) Provide the student borrower with general information with respect to the average indebtedness of student borrowers who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the student borrower's program of study;

(v) Inform the student borrower as to the average anticipated monthly repayment for those student borrowers based on the average indebtedness provided under paragraph (a)(3)(iv) of this section.

(5) * * *

(i) Ensure that each student borrower subject to initial counseling under paragraph (a)(1) of this section is provided written counseling materials that contain the information described in paragraph (a)(3) of this section;

(ii) Be designed to target those student borrowers who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

* * * * *

(6) A school that conducts initial counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes initial counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(b) *Exit counseling.* (1) A school must conduct exit counseling with each Direct Subsidized or Direct Unsubsidized Loan borrower shortly before the student borrower ceases at least half-time study at the school.

(2) The counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with knowledge of the title

IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the school may provide the student borrower with written counseling materials within 30 days after the student borrower completes the program.

(3) If a student borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, the school must provide exit counseling either through interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after the school learns that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(4) In conducting the exit counseling, the school must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the student borrower's program of study;

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, and income contingent repayment plans, and loan consolidation;

(iii) Provide options to the student borrower concerning those debt-management strategies that the school determines would facilitate repayment by the student borrower;

(iv) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(v) Meet the requirements described in paragraphs (a)(3)(ii) and (iii) of this section;

(vi) Review with the student borrower the conditions under which the student borrower may defer repayment or obtain a full or partial cancellation of a loan;

(vii) Review with the student borrower information on the availability of the Department's Student Loan Ombudsman's office; and

(viii) Require the student borrower to provide corrections to the school's records concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known). The school must provide this information to the Secretary within 60 days.

* * * * *

(6) A school that conducts exit counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes exit counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(Approved by the Office of Management and Budget under control number 1845–0021)

40. Section 685.402 is amended by adding a new paragraph (f) to read as follows:

§ 685.402 Criteria for schools to originate loans.

* * * * *

(f) *Determination of eligibility for multi-year use of the Master Promissory Note.* (1) A school must be authorized by the Secretary to use a single Master Promissory Note (MPN) as the basis for all loans borrowed by a student or parent borrower for attendance at that school. A school that is not authorized by the Secretary for multi-year use of the MPN must obtain a new MPN from a student or parent borrower for each academic year.

(2) To be authorized for multi-year use of the MPN, a school must—

(i) Be a four-year or graduate/professional school, or other institution meeting criteria or otherwise designated at the sole discretion of the Secretary; and

(ii)(A) Not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the Act; and

(B) Meet other performance criteria determined by the Secretary.

(3) A school that is authorized by the Secretary for multi-year use of the MPN must develop and document a confirmation process in accordance with guidelines established by the Secretary for loans made under the multi-year feature of the MPN.

(Authority: 20 U.S.C. 1087a *et seq.*)

§§ 685.206, 685.209, 685.213, 685.214 and 685.302 [Amended]

41. Sections 685.206, 685.209, 685.213, 685.214, and 685.302 are amended by revising the Office of Management and Budget control number to read "1845–0021".

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Part IV

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1845–AA04

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the loan default reduction and prevention measures in the Student Assistance General Provisions regulations in 34 CFR part 668. These regulations reflect changes made by the Higher Education Amendments of 1998 to the Higher Education Act of 1965, as amended (HEA).

DATES: These regulations are effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kenneth Smith, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Higher Education Amendments of 1998 (Pub. L. 105–244, enacted October 7, 1998, and referred to in the preamble to these final regulations as the "1998 Amendments") changed some requirements relating to the calculation of a school's Federal Family Education Loan (FFEL) Program cohort default rate, William D. Ford Federal Direct Loan (Direct Loan) Program cohort rate, or weighted average cohort rate. The Secretary is revising 34 CFR 668.17 of the Student Assistance General Provisions regulations to reflect these changes.

On July 30, 1999, we published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions in the **Federal Register** (64 FR 41752). In the preamble to the NPRM, we discussed on pages 41753 through 41758 the major changes proposed in that document for the loan default reduction and prevention measures in the Student Assistance General Provisions:

- Amending § 668.17(a)(1) and 668.17(j) to change the process that schools use to identify and challenge or request an adjustment to incorrect data.
- Amending § 668.17(b)(4) to reflect the amendment to the HEA that makes a school ineligible to participate in the Federal Pell Grant Program when it becomes ineligible to participate in the FFEL or Direct Loan Program due to excessive rates.
- Amending § 668.17(b)(5)(ii) and 668.17(b)(6) to implement the statutory amendments that make a school liable for the loans it certifies and delivers or originates and disburses while it is appealing a loss of participation.
- Amending § 668.17(c)(1)(ii)(A) and 668.17(j)(4) to reflect the statutory changes that modify the requirements for a school's appeal on the basis of its participation rate index (PRI).
- Amending § 668.17(c)(1)(ii)(B) and 668.17(c)(7) to reflect the amendments that modify requirements for a school's mitigating circumstances appeal based on its economically disadvantaged rate and completion or placement rate.
- Adding § 668.17(c)(1)(ii)(C) and (D) to permit a school to appeal its loss of participation on the basis of two new mitigating circumstances.
- Amending § 668.17(e), 668.17(f), and 668.17(h)(2)(iii) to conform to statutory changes in the definition of "default."
- Adding § 668.17(k) and Appendix H to implement the statutory changes relating to the treatment of special institutions.

Except for minor editorial and technical revisions and revisions that provide clarification, there are no differences between the NPRM and these final regulations. As in the NPRM, to avoid confusion in the preamble to these final regulations, we use the word "rate" by itself to refer to an FFEL Program cohort default rate, Direct Loan Program cohort rate. or weighted average cohort rate. We use the complete term if we are referring to another type of "rate": an "economically disadvantaged rate," a "completion rate," a "placement rate," or a "participation rate."

Discussion of Student Financial Assistance Regulations Development Process

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the Higher Education Act requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 30, 1999, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, 1999, and 23 comments were received. An analysis of the comments follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes in the proposed regulations, and we do not respond to comments suggesting changes that the Secretary is not authorized by law to make.

Analysis of Comments and Changes

General

Comments: In general, the commenters supported the proposed regulations and appreciated the Department's responsiveness to the student aid community.

Discussion: We appreciate the commenters' support for the proposed regulations and the work of the members of the negotiated rulemaking committee that resulted in the proposed regulations.

Changes: None.

Challenges and Adjustments to Inaccurate Data Used To Calculate Rates (§ 668.17(a)(1) and 668.17(j))

Comments: The commenters supported the proposed changes to the process for a school to challenge its draft data, especially the extension of the time limit for schools to submit the challenge, from 30 to 45 days. One commenter, while applauding the proposed change, recommended extending the time limit further, to 60 days. The commenter reasoned that this extension is necessary because the data review process usually takes place when schools are beginning their processing for the next academic year and when their State reports are due. The commenter also reasoned that the extension was necessary because formatting or other software changes may be needed to accommodate the electronic supporting data.

Several other commenters noted that the proposed regulations did not include a change to the 30-day timeframe under which a guaranty

agency must respond to a school's challenge. The commenters reasoned that new benefits associated with low cohort default rates may increase the number of challenges to draft rates and that it may be difficult for guaranty agencies to respond to challenges within the current 30-day timeframe. Commenters asked us to revise the regulations to allow the Secretary to extend a guaranty agency's response period if there are extenuating circumstances, acceptable to the Secretary, that will impair the agency's ability to respond within the required timeframe.

Discussion: Because of statutory requirements for the issuance and review of draft data and the issuance of final rates by September 30, the time period for the draft data review process is necessarily short. Extending the period for schools to challenge their draft rates from 30 to 45 days will further shorten the period. Under the process included in the regulations, schools must challenge their draft rates within 45 days, and guaranty agencies will have 30 days to respond to those challenges. An additional 2 months are needed for the guaranty agencies to submit corrected data to the National Student Loan Data System (NSLDS). At least two submission cycles are needed to ensure that NSLDS data has been updated and that any rejected data is corrected. In addition, we use this 2-month period to review guaranty agencies' responses to schools.

We intend to issue draft rates by late March. Final rates must be calculated by late August to ensure that they are published by September 30. Thus, the timeframes for the review process are very tight, and we do not believe it is possible to further extend the deadlines for individual actions. Allowing an option to extend timeframes for guaranty agencies on a case-by-case basis is not a workable alternative. Delayed responses from one or two guaranty agencies could significantly affect the accuracy of many schools' rates.

Changes: None.

Comments: In the preamble to the NPRM, the Department announced administrative changes to the process used by a school to request an adjustment to a published rate: supporting data will be provided to more schools with their published rates, a school will have more time to request an adjustment, and a school will be able to request an adjustment of the data used to calculate its published rate that was not used to calculate its draft rate ("new data"). Commenters generally expressed appreciation for all of these changes. Several commenters asked for clarification in the preamble to these final regulations concerning the types of adjustments to new data that a school would be able to request.

Discussion: The "new data adjustment," which will be available to schools beginning with receipt of the fiscal year (FY) 1998 published rates, will be used only to adjust rates based on incorrect new data. "New data" are data that were reported one way in the draft rate and a different way in the published rate. Schools may not use this process to correct data that were used to calculate their draft rates: a school must have challenged its draft rate to correct the data on which the draft rate was based.

For example, if a borrower was included in the denominator of the calculation of a school's draft rate but was not included in the calculation of its final rate, the school may use a new data adjustment to correct the data that resulted in the removal of the borrower, incorrectly, from the calculation of the published rate. However, if a borrower was not included in both the draft and published rates, the school may not use a new data adjustment to correct data that resulted in the borrower's exclusion from its published rate.

Changes: None.

Comments: The NPRM's preamble announced other administrative changes to the process used to challenge and adjust rates. These changes included making supporting data available to schools in an electronic format and allowing schools to view, year round, "real-time" loan repayment and default data that will be used to calculate their rates. These changes will affect the process for both draft and published rates and will be implemented under the timelines announced in the preamble to the NPRM.

Several commenters asked for clarification in this preamble concerning the process for providing electronic supporting data and real-time data. Two commenters recommended that we make electronic data available to all schools and guaranty agencies, in a format compatible with schools' software, and that eventually we provide electronic data automatically to all schools. Commenters recommended that we provide real-time data via a system to which schools currently have access, and they suggested the use of the National Student Loan Data System (NSLDS) for this purpose. The commenters reasoned that these provisions would reduce the administrative and financial burden for schools.

Discussion: We intend to meet the implementation timeframes described in the preamble to the NPRM for providing supporting data to schools electronically and for providing data on a real-time basis. After those deadlines are met, we expect eventually to provide supporting data electronically to all schools and to guaranty agencies. We are also working with schools to ensure that the format of the electronic supporting data is compatible with schools' computer hardware and software. In addition, we plan to provide real-time data to schools via NSLDS.

Changes: None.

Deadline for Publishing Rates (§ 668.17(b)(3))

Comments: In the preamble to the NPRM, we addressed the concerns expressed by some non-Federal negotiators during negotiated rulemaking about the possible consequences of our issuing rates after the date required by statute, September 30 of a year. Four commenters noted that the Department's guidance is not currently included in regulations or other guidance issued by the Department and recommended that the guidance be provided more formally. Two commenters reasoned that, without this formal guidance, a school's eligibility may be challenged by a party critical of the guidance. Commenters recommended that the guidance be provided in the Student Financial Aid Handbook and in the Cohort Default Rate Guide. One commenter recommended including the guidance in regulations.

Discussion: We have already published the Department's view of the effect of a later publication of rates in the FY 1997 Official Cohort Default Rate Guide and in the 1999–2000 Student Financial Aid Handbook. It is not appropriate or necessary to include this guidance in regulations because the Department intends to meet the statutory requirements and publish rates by September 30 of each year.

Changes: None.

Loss of Pell Eligibility (§ 668.17(b)(4))

Comments: One commenter stated that the compromise reached during negotiated rulemaking was fair in allowing a school with excessive rates to continue participating in the Federal Pell Grant Program if it had not certified an FFEL loan or originated a Direct Loan on or after July 7, 1998. Several commenters asked us to clarify in this preamble whether a school could meet this criteria if it delivered FFEL funds or disbursed Direct Loan funds after July

7, 1998, for a loan certified or originated before that date.

Another commenter recommended removing this provision entirely. The commenter reasoned that, as the process to develop the statute was lengthy, schools had adequate time to withdraw formally from the FFEL and Direct Loan programs before its enactment. The commenter believed that the basis provided for including this provision was speculative and that its inclusion in regulations would lead to the loss of Federal funds.

Discussion: Under § 668.17(b)(4)(iii), a school with excessive rates would be allowed to continue participating in the Federal Pell Grant Program if it has not certified an FFEL loan or originated a Direct Loan on or after July 7, 1998. Because this criterion is specific to the certification or origination of loans, a school's delivery or disbursement of funds after July 7, 1998, for a loan that was certified or originated before that date does not affect a school's satisfaction of the criterion.

We do not agree with the recommendation that the provision allowing continued participation in the Federal Pell Grant Program be removed from the regulations. The Department is satisfied that there were cases in which schools that intended to withdraw from the FFEL or the Direct Loan Program were not aware that they needed to notify the Department in writing and instead simply stopped certifying or originating loans. The Department believes that these schools should not lose the opportunity to participate in the Federal Pell Grant Program based on their rates.

Changes: None.

Comments: One commenter recommended that a school be allowed to continue participating in the Federal Pell Grant Program, despite loss of participation in the FFEL or Direct Loan Program due to excessive rates, if the school: (1) Is in good standing with the community and its accreditation organization, (2) was not aware of the provisions in the 1998 Amendments for loss of eligibility to participate in the Federal Pell Grant Program, and (3) returns all FFEL Program and Direct Loan Program funds received after the date of enactment of the 1998 Amendments. The commenter reasoned that this provision would allow schools to continue participating in the Federal Pell Grant Program and providing an education to needy students.

Discussion: The commenter's recommendations are inconsistent with statutory requirements. The HEA provides only two exceptions to the loss of participation in the Federal Pell Grant Program based on excessive rates: (1) The school did not have the opportunity to appeal its rate under the appropriate regulations, and (2) the school did not participate in the FFEL or Direct Loan Program on or after the date of enactment.

Changes: None.

Liability for Unsuccessful Appeals (§ 668.17(b)(5)(ii) and 668.17(b)(6))

Comments: Several commenters asked for clarification of the regulations for establishing a school's liability on loans made during an unsuccessful appeal. In particular, the commenters requested that we provide further explanation of—

(1) Whether the liability determination would apply to schools that are subject to loss of participation based on three rates over 25 percent, for schools with one rate over 40 percent, or for special institutions that are continuing to participate by complying with the requirements of § 668.17(k);

(2) The formula that will be used to calculate a school's liability;

(3) The beginning and ending date of the period during which a school would be liable;

(4) Whether a school that suspends its participation to avoid a liability may resume its participation 45 days after the submission of its completed appeal, without incurring a liability, if we have not made a determination on the appeal; and

(5) Whether the repayment terms for a liability will be flexible enough to ensure a school's repayment without causing serious financial problems for the school and its students.

Discussion: Responses to each of the commenters' issues follow:

(1) The liability for loans made during the appeal process only applies to a school with rates of 25 percent or more for 3 consecutive years that is subject to an action under § 668.17 (a)(3), (b)(1), or (b)(2). The 1998 Amendments do not require a similar liability determination for a school subject to termination from all of the Title IV programs based on a rate over 40 percent. In addition, a special institution would only be subject to this type of liability if it is *not* in compliance with § 668.17(k) and its rates for the 3 most recent fiscal years are 25 percent or more. If a special institution is in compliance with § 668.17(k), and thus not subject to an action under § 668.17 (a)(3), (b)(1), or (b)(3), it may challenge its rate without incurring a potential liability.

(2) A more detailed description of the estimated loss formula is available to the public on the Internet at the following site: http://ifap.ed.gov/csb_html/procmemo.htm.

The current guidance on the estimated loss formula is provided on that site, under "Procedure Memos Sorted by Memo Number," in IRB Memo 92–3, which is listed as "I92–3."

(3) The period during which a school would be liable begins 30 calendar days after it receives its published rate and ends on the 45th calendar day after the school submits its completed appeal.

(4) The final regulations have been changed to clarify that a school's suspension of its participation need not continue longer than 45 days after it submits its completed appeal to the Department. Like other schools, a school that suspends its participation would not incur this type of liability for funds delivered or disbursed more than 45 calendar days after it submits its completed appeal to the Department.

(5) We will consider a school's request for more time to repay a liability, over a period greater than the 45 days allowed in the regulations, on a case-by-case basis. A determination to extend a school's repayment period may include a consideration of the school's circumstances, its students' circumstances, and the best method to ensure that funds are recovered.

Changes: We have revised § 668.17(b)(6) to clarify that, if a school suspends its participation in order to avoid a liability, the suspension may end 45 days after the school submits its completed appeal. We have also revised the regulations to clarify that a school is subject to a potential liability for loans certified and delivered or originated and disbursed during the appeal process if the school is subject to an action under § 668.17(a)(3), (b)(1), or (b)(2).

Comments: One commenter stated that the use of the Department's "Estimated Loss Formula" to determine a school's liability for loans made during an unsuccessful appeal, as described in the NPRM, exaggerates the potential loss to the Government and would make appeals prohibitively expensive. The commenter stated that the intent of Congress was to focus on the amount of interest and special allowance for loans made during the appeals period, rather than on the amounts calculated under the "Estimated Loss Formula." The commenter did not believe that the issue is adequately addressed by allowing a school to avoid a liability by suspending its participation.

Discussion: Under the amendments to section 435(a)(2)(A) of the HEA, a school's liability is not limited to the amount of the interest and special allowance on the loans made during its appeal. Rather, the HEA requires an institution to pay "an amount equal to

the amount of interest, special allowance, reinsurance, and any related payments." Thus, the amount of the Government's costs for reinsurance and any related payments must be included in the calculation of the school's liability.

We also do not agree that the Department's "Estimated Loss Formula" exaggerates potential losses to the Government. As described in the NPRM, the formula uses the school's most recent published rate to estimate the principal amount of the loans that would be expected to default and estimates the costs that will be incurred for interest, special allowance, and other losses on the loans. These amounts are equivalent to the amounts that the HEA requires a school to pay. The formula is used by the Department to calculate schools' liabilities in other, similar circumstances, and it has proven to be a reliable and supportable measure of potential losses to the government.

Assessing a liability does not make appeals prohibitively expensive because any school may avoid a liability by suspending its participation in the loan program or programs during the appeal process. If a school has confidence in the basis for its appeal, it will be able to continue to participate during the appeal process with the same confidence. The regulations ensure that the school, rather than the Government, assumes the risk for the cost of the loans made during an unsuccessful appeal.

Changes: None.

Comments: The proposed § 668.17(b)(6)(ii)(C)(*1*) would permit a school to appeal, under subpart H of 34 CFR part 668, a liability calculated for loans made during an unsuccessful appeal. As the provisions in subpart H are used by schools to appeal final audit and program review determinations, one commenter asked for clarification of the procedures that a school would use to file this type of appeal. The commenter did not understand how or why subpart H could be used to appeal the calculation of this liability.

Discussion: In appealing a calculation of a liability for loans under these regulations, under subpart H, the calculation will be treated as a program review determination.

Changes: We have revised § 668.17(b)(6)(ii)(C)(*1*) to clarify the procedures for the appeal of a liability.

Participation Rate Index (PRI) (§ 668.17(c)(1)(ii)(A) and 668.17(j)(4))

Comments: None.

Discussion: On further review, we have determined that the language in § 668.17(c)(1)(ii)(A)(*2*), explaining the method for calculating a PRI, could be misinterpreted. We have modified the language to avoid confusion. The new language does not change the substance of the calculation.

Changes: We have revised § 668.17(c)(1)(ii)(A)(*2*) to more clearly describe the calculation of a school's PRI for a fiscal year.

Comments: Several commenters recommended that the regulations be revised to clarify the procedures that may be used by schools to challenge an anticipated loss of participation, on the basis of a participation rate index (PRI), during the draft rate process. The commenters stated that the proximity of the proposed regulations in § 668.17(j)(4) to the provisions for a challenge of incorrect data may cause confusion. They were especially concerned that schools may send their PRI challenges to guaranty agencies, rather than to the Department.

Discussion: Though the two paragraphs contain separate requirements, we agree that their proximity in the regulations could cause some confusion.

Changes: We have revised § 668.17(j)(4) to distinguish more clearly between the procedures and requirements for a challenge of inaccurate data and those for a PRI challenge.

Comments: One commenter asked us to clarify the consequences of a school's successful PRI appeal based on a draft rate, if the school's published rate for the same fiscal year would not result in a successful PRI appeal. Another commenter noted that under the proposed regulations, if a school successfully challenges an anticipated loss of participation during the draft rate process, the school would have to appeal again the following year to continue participating, even if the draft rate upon which the school based its original challenge is equal to or higher than the same fiscal year's published rate. The commenter stated that this type of second appeal is unnecessarily burdensome and recommended that it be required only if the draft rate upon which a school bases its PRI challenge is lower than the published rate.

Discussion: Since a PRI challenge or appeal may be based on the PRI for any of the 3 most recent fiscal years for which data are available, the same PRI may be a criterion for a school's challenge or appeal in more than one year. A school that successfully challenges or appeals a loss of participation, based on its PRI, does not need to challenge or appeal again in a subsequent year as long as the same, successful PRI could be used as a basis for the subsequent appeal. An example is provided in the preamble to the NPRM.

If a school's PRI challenge based on a draft rate is successful, and the school's published rate for the same fiscal year would not result in a successful appeal, the school has still successfully challenged its loss of participation for that year. However, when rates are published the following year, the prior, successful PRI challenge, based on a draft rate, cannot be used to continue the school's participation, because a prior year's draft rate is not a basis for a challenge or appeal of a school's current loss of participation.

We agree with the comment suggesting that we should not require a school to appeal a second time if it successfully appealed the previous year on the basis of a PRI calculated using its draft rate and its published rate for the same fiscal year was equal to or lower than its draft rate. In that case, there is no need for the school to submit another appeal because we already have enough information to determine that the school's appeal would be successful.

The administrative procedure used to make the determination that the school's appeal would be successful will be similar to the procedure used for the new mitigating circumstances appeals provided in § 668.17(c)(1)(ii)(C) and (D). There is no need to include this procedure in the regulations. If information we maintain can be used to determine that a school's PRI appeal would be successful, we will calculate the results and notify the school. In addition to the circumstances noted by the commenter, this calculation would also be performed if a school's challenge during the draft rate process is unsuccessful, its published rate for the same fiscal year is lower than its draft rate, and an appeal based on the published rate would be successful. In that case, we would also calculate the results of the school's PRI appeal and notify the school.

Changes: None.

Mitigating Circumstances Appeals (§ 668.17(c)(1)(ii)(B) and 668.17(c)(7))

Comments: Previously, the economically disadvantaged rates, completion rates, and placement rates used to determine a school's mitigating circumstances appeal were calculated as percentages of all of the school's regular students. The NPRM proposed to limit the groups of students for whom the percentages are calculated to include only students who are enrolled in programs eligible for Title IV aid. This change was requested by some of the negotiators during negotiated rulemaking because they believed it was

unlikely that the records needed to determine a school's economically disadvantaged rate would be available for students not in Title IV eligible programs.

In general, commenters supported this change. They reasoned that if the change were not made, it would be difficult for schools to obtain the information necessary to determine eligibility for this type of appeal. One commenter stated that this change was also appropriate because it focused on the completion and placement outcomes for students attending classes supported by Title IV funds.

Several other commenters suggested that only the economically disadvantaged rate should be based on students enrolled in programs eligible for Title IV aid and that a school should have an option to base its completion rate or placement rate on either its regular students or on the students in Title IV eligible programs. They reasoned that, as the same problem with records does not apply to completion and placement rates, giving a school this option may provide a small degree of assistance for schools to satisfy the criteria for a successful appeal and to continue to serve economically disadvantaged students.

Discussion: All of the commenters' suggestions were considered and rejected during the negotiated rulemaking process. As one commenter noted, one of the reasons for restricting the calculation to students in Title IV eligible programs was that, in doing so, the calculation would be restricted to the loan programs that are actually serving the low-income population. Basing the economically disadvantaged rate and the completion and placement rates on different populations would not ensure that the benefit shown in the school's completion or placement rate was actually received by economically disadvantaged students.

Changes: None.

Comments: One commenter asked for clarification concerning our intent to explain to a school the reasons that we have determined an independent auditor's report or an institution's management's assertion to be "contradicted or otherwise refuted." Another commenter recommended that we define "independent auditor" in these final regulations and that we include provisions for rejecting an auditor's certification that a school meets the criteria for the appeal if the facts demonstrate that the auditor's opinion is fraudulent or inaccurate. The commenter also recommended that we use more than just the information we maintain when making a determination on an appeal. The commenter recommended that these final regulations be revised to allow us to routinely obtain information for making our determinations, reasoning that limiting ourselves to the information that we maintain invites abuses and that we have no reason to believe that auditors will always act honestly and truthfully.

Discussion: If a school's appeal is not accepted because we determine an independent auditor's report or an institution's management's assertion to be "contradicted or otherwise refuted" by the information we maintain, the reasons for our determination will be explained in the notification we send to the school.

We agree with the commenter's recommendation that a definition of "independent auditor" should be referenced in these regulations. "Independent auditor" is already defined in § 668.23(a)(1), and we have incorporated that definition into this section of the regulations.

The additional requirements that the commenter recommends to prevent fraud or inaccuracies are not needed.

The proposed regulations allow us to deny an institution's appeal if we determine that the independent auditor's report does not meet the requirements of § 668.17 or that it is contradicted or otherwise refuted by information that we maintain. The standards for the engagement that forms the basis for an independent auditor's opinion, in § 668.17(c)(7)(ii)(B), include criteria that address an auditor's proficiency and independence. Also, as we noted in the NPRM's preamble, if improprieties are suspected in a school's appeal, an investigation could be pursued under other legal authority.

We also do not agree with the commenter's recommendation that we routinely obtain information to evaluate the validity of the auditor's certification for these appeals. As we discussed in the preamble to the NPRM, it would be inappropriate for us to ignore information we maintain or any contradictions in the data of an independent auditor's report when deciding whether a school meets the appeal's criteria. However, we believe that it would be inconsistent with congressional intent for us to routinely duplicate the work of an independent auditor by conducting investigations to gather additional information.

Changes: We have revised § 668.17(c)(1)(ii)(B)(*1*) to incorporate the definition of "independent auditor" from § 668.23.

Other Mitigating Circumstances Appeals (§ 668.17(c)(1)(ii)(C) and (D))

Comments: Many commenters strongly supported the two new mitigating circumstances that were included in the NPRM, which will allow schools to appeal based on the total number of borrowers in the 3 most recent fiscal years and will allow schools with "average" rates to appeal based on the rate for a single fiscal year only. The commenters stated that these new mitigating circumstances are a significant improvement toward eliminating sanctions based on statistically insignificant percentages and that they represent movement in a positive direction toward reducing unnecessary regulatory penalties. Commenters asked that the Secretary revisit these and other issues related to schools' rates in future negotiations.

One commenter noted that, under the 1998 Amendments, the Secretary is required to conduct a study of the effectiveness of rates for certain schools at which a small percentage of students receive loans. The commenter asked the Department to further address these schools' circumstances after conducting the required study. The commenter felt that this is necessary because a school's excessive rates may cause it to suffer from public criticism or to be placed on a provisional certification status, regardless of its being allowed to continue its participation in the Title IV programs as the result of a successful appeal.

Discussion: We appreciate the commenters' support for the proposed regulations, and their interest in this issue and in the study of the effectiveness of rates. We will consider these issues and the results of the study during the ongoing review of the regulations for the Title IV programs.

Changes: None.

Comments: Several commenters stated that the language in the preamble to the NPRM and in the proposed regulations was in error when it used the phrase "30 or fewer." They noted that an average rate, as described in § 668.17(d), (e), and (f), is calculated for a school with "fewer than 30" borrowers entering repayment in that fiscal year. The commenters asked us to correct the language in the NPRM.

Discussion: There is no error. The phrases "30 or fewer" and "fewer than 30," as used in the preamble to the NPRM and in the proposed regulations, apply to separate, unrelated requirements. As the commenters note, an "average" rate is calculated for a school with "fewer than 30" borrowers entering repayment during a fiscal year.

However, the proposed regulations would add a new mitigating circumstance that allows a school to appeal its loss of participation if the total number of its borrowers entering repayment in the 3 most recent fiscal years for which data are available is "30 or fewer." The former standard is used in determining how a school's rate is calculated. The latter standard is used in determining a school's eligibility to appeal a loss of participation. However, we do recognize the value of making terms in these regulations consistent, and we will reconsider this issue during the ongoing review of the regulations for the Title IV programs.

Changes: None.

Definition of "Default" (§ 668.17(e), 668.17(f), and 668.17(h)(2)(iii))

Comments: Several commenters were concerned that readers might be confused by the NPRM's explanation of the date on which a loan is considered to be in default for the purpose of calculating a rate. They stated that some readers might believe, based on the preamble's language, that the actual definition of "default" for an FFEL Program loan was changing from 270 days of delinquency to 360 days and asked us to provide clarification in the preamble to these final regulations.

Discussion: The 1998 Amendments changed the definition of a default on an FFEL or a Direct Loan Program loan from 180 days to 270 days past due for a loan that is repayable in monthly installments and from 240 days to 330 days past due for loans repayable in less frequent installments. The definition of "default" that is used in § 668.17 for the purpose of calculating rates is *based* on this general definition. It is not the same as the definition provided in the statute for the date of a borrower's default.

For the purposes of calculating an FFEL Program cohort default rate, a default is generally considered to have occurred on the date that a claim for insurance is paid on the loan by a guaranty agency. Since there is generally a 90-day period between the date that a borrower defaults and the date that an insurance claim is paid, an FFEL Program loan would not normally be considered in default for the purposes of calculating a school's rate until it is at least 360 days past due (270 days + 90 days = 360 days). For consistency, because Direct Loans do not go through a claims payment process, these final regulations change from 270 to 360 the number of days past due after which a Direct Loan borrower is considered in default for purposes of calculating a school's rate.

Changes: None.

Comments: Several commenters expressed concerns about the impact of the change in the definition of "default," from 180 days to 270 days, upon the calculation of a school's rate. The commenters were concerned that, using the current method to calculate rates, the change in the timeframe may remove a significant number of defaulted borrowers from the calculation of rates, decreasing their consistency and accuracy as a reflection of the borrowing history of a school and affecting the effectiveness of default prevention activities conducted by schools. Some commenters stated that it is appropriate for the Department to consider the impact of the change in the definition of "default" on schools' rates and to communicate its intentions concerning anticipated future changes, if any, to the calculation of rates. One commenter asked the Department to devise a calculation that would address the lengthened default period.

Discussion: The calculation of a school's rate is defined in section 435(m) of the HEA.

Changes: None.

Special Institutions (§ 668.17(k) and Appendix H)

Comments: One commenter stated that historically black colleges or universities, tribally controlled community colleges, and Navajo community colleges ("special institutions") have already had an adequate length of time to reduce their rates to acceptable levels. The commenter objected to continuing a double standard and asked to either eliminate the provisions that allow special institutions with excessive rates to continue to participate or to apply the same criteria to all schools with excessive rates.

Another commenter questioned the creation of a new Appendix H when Appendix D of 34 CFR part 668 already addresses default management plans. The commenter suggested that, since Appendix D needs to be updated, the two appendices should be combined, updated, and applied to all schools. The commenter also asked that regulations specify whether a special institution would be subject to loss of participation in the Federal Pell Grant Program if it is not in compliance with § 668.17(k).

Discussion: The provisions that provide a different treatment for special institutions with excessive rates are statutory and cannot be changed by regulations. Also, it is not necessary to specify in § 668.17(k) that a school is subject to loss of participation in the Federal Pell Grant Program if it is not in compliance with that paragraph. If any school is subject to a loss of participation in the FFEL or Direct Loan Program under § 668.17, it is also subject to loss of participation in the Federal Pell Grant Program if it meets the criteria in § 668.17(b)(4).

The requirements reflected in § 668.17(k) are limited to a 3-year transition period, after which the consequences of excessive rates will become fully applicable to special institutions. As other schools do not have the same transition period, these criteria are not appropriate for them.

Finally, we believe it would be inappropriate to revise, in these final regulations, the current Appendix D to include some or all of the guidance in Appendix H, because the revision would go beyond the scope of the proposed regulations. However, the updates to Appendix D suggested by the commenter will be considered during the ongoing review of the regulations for the Title IV programs.

Changes: None.

Comments: The criteria for determining whether a special institution has made substantial improvement are listed in paragraphs (A) through (H) of § 668.17(k)(4)(i). One commenter stated that while it is appropriate to use either paragraph (A) or (B), by itself, to determine a school's substantial improvement, the commenter did not believe that any of the remaining criteria, alone, would adequately reduce a school's rate. The commenter suggested that, if a school cannot show that it has met the criterion in either paragraph (A) or (B), a school should be required to meet more than one of the remaining criteria in order for the Secretary to determine that the school has made substantial improvement.

The commenter also suggested the following changes to Appendix H: (1) to include, under "Core Default Reduction Strategies," the design of procedures to reduce a school's rate by identifying and implementing alternative financial aid award policies and developing alternative financial resources; (2) to provide for monthly, rather than annual, targets for reductions in a school's rate; (3) to make item 7 the first item under "Additional Default Reduction Strategies," reasoning that this item is the most effective long-term solution; (4) to remove item 1 under "Statistics for Measuring Progress;" and (5) to provide for the tracking of sub-categories of borrowers under items 2 and 7 under "Additional Default Reduction Strategies." The commenter felt that these changes would assist schools in identifying potential problems and

reacting to them more quickly and effectively.

Discussion: The requirements in § 668.17(k) and the sample plan in Appendix H are provided to ensure that a school that is subject to those provisions will, no later than July 1, 2002, have a rate that is less than 25 percent. To regulate the requirements in more detail, as the commenter suggests, or to provide more detailed guidance in the sample plan in Appendix H, may tend to limit a school's choices and make a school less able to devote its resources effectively to the task at hand. Each school needs the flexibility to implement a plan that addresses its individual circumstances.

The same flexibility is needed in making a determination of a school's substantial improvement under § 668.17(k)(4)(i). The criteria in that paragraph are the bases for a determination of substantial improvement, but the criteria will be applied to schools as appropriate to their individual circumstances, as described in § 668.17(k)(4)(ii). If a school's performance under any one of the criteria is adequate to determine that it has made substantial improvement, there is no reason to require the school to meet another criterion under that paragraph.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (64 FR 41752).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected section of the regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant Program and the State Student Incentive Grant Program are subject to Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of our specific plans and actions for these programs.

The Federal Family Education Loan, Federal Supplemental Loans for Students, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Income Contingent Loan, and William D. Ford Federal Direct Loan programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.226 Income Contingent Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 20, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.17 is amended to read as follows by—

A. Revising paragraph (a)(1).

B. In the introductory language for paragraph (b)(3), removing the word "institution's" and adding, in its place, "institution whose"; removing the word "respectively"; and removing the words "section and continuing" and adding, in their place, "section. The loss of participation continues".

C. Revising paragraphs (b)(4) through (b)(6).

D. In the introductory text for paragraph (c)(1), after "except that an institution may submit an appeal under", removing the word "section" and adding, in its place, "paragraph"; removing the words "the information required by paragraph (c)(7) may be submitted in accordance with that paragraph" and adding, in their place, "an institution submits an appeal under paragraph (c)(1)(ii)(B) of this section in accordance with paragraph (c)(7) of this section"; and removing the sentence, "The additional 30-day period specified

in paragraph (c)(7) of this section is an extension for the submission of the auditor's statement only and does not affect the date by which the appeal data must be submitted."

E. Revising paragraphs (c)(1)(ii), (c)(2), and (c)(7).

F. In paragraphs (e)(1)(ii)(A), (e)(1)(ii)(B), (f)(1)(ii)(A), and (f)(1)(ii)(B), removing the number "270" and adding, in its place, "360".

G. In paragraphs (e)(3) and (f)(3), removing "270 days" and adding, in its place, "360 days (or for 270 days, if the borrower's delinquency began before October 7, 1998)".

H. In paragraph (h)(2)(ii), adding, at the end of the paragraph, "In excluding loans from the calculations of these rates, the Secretary removes them from both the number of students who entered repayment and the number of students who defaulted."

I. In paragraph (h)(2)(iii), removing the number "270" and adding, in its place, "360".

J. In the introductory language for paragraph (h)(3)(ii)(B), removing the words "with a representative sample" and adding, in their place, "with access, for a reasonable period of time not to exceed 30 days, to a representative sample"; and removing the words "records submitted by the lender to the guaranty agency to support the lender's submission of a default claim and included in the claim file" and adding, in their place, "collection and payment history records provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan".

K. In the introductory language for paragraph (h)(3)(iii)(B), removing the words "with a representative sample" and adding, in their place, "with access, for a reasonable period of time not to exceed 30 days, to a representative sample"; and removing the words "records maintained by the Department's Direct Loan Servicer with respect to the servicing and collecting of delinquent loans prior to the default" and adding, in their place, "collection and payment history records maintained by the Department's Direct Loan Servicer that are used in determining an institution's Direct Loan Program cohort rate or weighted average cohort rate".

L. Revising paragraph (j)(1)(ii).

M. Removing paragraph (j)(1)(iii).

N. Redesignating paragraphs (j)(2), (j)(3), (j)(4), (j)(5), and (j)(7) as paragraphs (j)(3)(i), (j)(3)(ii), (j)(3)(iii), (j)(3)(iv), and (j)(3)(v), respectively.

O. Redesignating paragraph (j)(6) as (j)(2).

P. In the redesignated paragraph (j)(2), removing the cross-reference "(h)(1)" and adding, in its place, "(j)(1)".

Q. In the redesignated paragraph (j)(3)(i), removing the number "30" and adding, in its place, "45".

R. In the redesignated paragraph (j)(3)(ii), removing the citation "(h)(2)" and adding, in its place, "(j)(3)(i)".

S. In the redesignated paragraph (j)(3)(v), removing the citation "(d)(1)" and adding, in its place, "(c)(1)(i)"; removing the word "preliminary" and adding, in its place, "draft"; and removing the citation "(h)" and adding, in its place, "(j)(3)".

T. Adding a new paragraph (j)(4).

U. Adding a new paragraph (k).

V. Revising the OMB control number following the section.

§ 668.17 Default reduction and prevention measures.

(a) * * *

(1)(i) If the Secretary calculates an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate for an institution, the Secretary notifies the institution of that rate.

(ii) If an institution has an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of 10 percent or more, the Secretary includes a copy of the supporting data used in the calculation of the rate with the notice of the rate.

(iii) An institution with an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent may request a copy of the supporting data used in the calculation of the rate. The institution's request must be sent to the Secretary within 10 working days of receiving the Secretary's notice. Upon receiving the institution's request, the Secretary sends a copy of the data to the institution.

* * * * *

(b) * * *

(4) If an institution loses eligibility to participate in the FFEL or Direct Loan Program under this section, it also loses eligibility to participate in the Federal Pell Grant Program for the same period of time, except that the institution may continue to participate in the Federal Pell Grant Program if the Secretary determines that the institution—

(i) Was ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and the institution's eligibility was not reinstated;

(ii) Requested in writing, before October 7, 1998, to withdraw its participation in the FFEL and Direct Loan programs, and the institution did not subsequently re-apply to participate; or

(iii) Has not certified an FFEL loan or originated a Direct Loan on or after July 7, 1998.

(5) An institution whose participation in the FFEL, Direct Loan, or Federal Pell Grant Program ends under paragraph (a)(3), (b)(1), (b)(2), or (b)(4) of this section may not participate in that program until the institution—

(i) Demonstrates to the Secretary that it meets all requirements for participation in the FFEL, Direct Loan, or Federal Pell Grant Program;

(ii) Has paid any amount owed to the Secretary under paragraph (b)(6)(ii) of this section or is meeting that obligation under an agreement satisfactory to the Secretary; and

(iii) Executes a new agreement with the Secretary for participation in that program following the period described in paragraph (b)(3) of this section.

(6)(i) An institution may, notwithstanding § 668.26, continue to participate in the FFEL, Direct Loan, and Federal Pell Grant programs until the Secretary issues a decision on the institution's appeal if the Secretary receives an appeal that is complete, accurate, and timely in accordance with paragraph (c) of this section.

(ii) If an institution subject to an action under paragraph (a)(3), (b)(1), or (b)(2) of this section files a complete, accurate, and timely appeal under paragraph (c) of this section and the institution's appeal is unsuccessful—

(A) The Secretary estimates the amount of interest, special allowance, reinsurance, and any related or similar payments made by the Secretary (or which the Secretary is obligated to make) on any FFEL or Direct Loan Program loan for which the institution certified and delivered or originated and disbursed funds more than 30 calendar days after the date the institution received its most recent notification under paragraph (a)(1)(i) of this section;

(B) The Secretary excludes from the estimate calculated under paragraph (b)(6)(ii)(A) of this section any amount that is attributable to funds delivered or disbursed by the institution more than 45 calendar days after the date on which the institution submitted its completed appeal to the Secretary; and

(C) The institution must pay the Secretary the amount estimated under paragraph (b)(6)(ii) of this section within 45 days of the date of the Secretary's notification, unless—

(*1*) The institution files an appeal under the procedures established in subpart H of this part, for which the calculation of the institution's liability

is considered a final program review determination; or

(*2*) The Secretary permits a longer repayment period.

(iii) An institution may suspend its participation in the FFEL or Direct Loan Program during the period in which it would otherwise be subject to a liability under paragraph (b)(6)(ii) of this section.

(iv) An institution may also continue to participate in the FFEL Program or Direct Loan Program if it is in compliance with paragraph (k) of this section.

(c) * * *

(1) * * *

(ii) The institution meets one of the following exceptional mitigating circumstances:

(A)(*1*) The institution's participation rate index, as determined under paragraph (c)(1)(ii)(A)(*2*) of this section, is equal to or less than 0.0375 for any of the 3 most recent fiscal years for which data are available.

(*2*) For the purpose of paragraph (c)(1)(ii)(A)(*1*) of this section, an institution's participation rate index for a fiscal year is determined by multiplying its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate for that fiscal year by the percentage that is calculated by dividing—

(*i*) The number of students who received an FFEL or Direct Loan to attend the institution during a loan period that coincided with any part of a 12-month period that ended during the 6 months immediately preceding that fiscal year; by

(*ii*) The number of regular students, as defined in 34 CFR 600.2, who were enrolled at the institution on at least a half-time basis during any part of the same 12-month period.

(B)(*1*) The report of an independent auditor (as defined in § 668.23(a)(1)), submitted under paragraph (c)(7) of this section, certifies that the institution's economically disadvantaged rate is two-thirds or more, as determined under paragraph (c)(1)(ii)(B)(*2*) of this section, and—

(*i*) If the institution offers an associate, baccalaureate, graduate or professional degree, the institution's completion rate is 70 percent or more, as determined under paragraph (c)(1)(ii)(B)(*3*) of this section; or

(*ii*) If the institution does not offer an associate, baccalaureate, graduate or professional degree, the institution's placement rate is 44 percent or more, as determined under paragraph (c)(1)(ii)(B)(*4*) of this section.

(*2*) For the purpose of paragraph (c)(1)(ii)(B)(*1*) of this section, an institution's economically disadvantaged rate is the percentage of its students, enrolled on at least a half-time basis in an eligible program at the institution during any part of a 12-month period that ended during the 6 months immediately preceding the fiscal year for which the cohort of borrowers (used to calculate the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate) is determined, who—

(*i*) Are eligible to receive a Federal Pell Grant award of at least one-half the maximum Federal Pell Grant award for which the student would be eligible based on the student's enrollment status; or

(*ii*) Have an adjusted gross income that, if added to the adjusted gross income of the student's parents (unless the student is an independent student), is less than the poverty level as determined by the Department of Health and Human Services.

(*3*) For the purpose of paragraph (c)(1)(ii)(B)(*1*) of this section, an institution's completion rate is the percentage of its regular students, initially enrolled on a full-time basis in an eligible program and scheduled to complete their programs, as described in paragraph (c)(2) of this section, during the same 12-month period used to determine its economically disadvantaged rate under paragraph (c)(1)(ii)(B)(*2*) of this section, who—

(*i*) Completed the educational programs in which they were enrolled;

(*ii*) Transferred from the institution to a higher level educational program;

(*iii*) Remained enrolled and making satisfactory progress toward completion of the student's educational programs at the end of the 12-month period; or

(*iv*) Entered active duty in the Armed Forces of the United States within 1 year after their last day of attendance at the institution.

(*4*)(*i*) Except as provided in paragraph (c)(1)(ii)(B)(*4*)(*ii*) of this section, for the purpose of paragraph (c)(1)(ii)(B)(*1*) of this section, an institution's placement rate is the percentage of its former students, as described in paragraph (c)(1)(ii)(B)(*4*)(*iii*) of this section, who are employed, in an occupation for which the institution provided training, on the date following 1 year after their last date of attendance at the institution; were employed, in an occupation for which the institution provided training, for at least 13 weeks before the date following 1 year after their last date of attendance at the institution; or entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at the institution.

(*ii*) If a former student's employer is the institution, the student is not considered employed for the purposes of paragraph (c)(1)(ii)(B) of this section.

(*iii*) The former students who are used to determine an institution's placement rate under paragraph (c)(1)(ii)(B)(*4*) of this section include only students who were initially enrolled in eligible programs on at least a half-time basis; were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to determine the institution's economically disadvantaged rate under paragraph (c)(1)(ii)(B)(*2*) of this section; and remained in the program beyond the point at which a student would have received a 100 percent tuition refund from the institution. A student is not included in the calculation of the placement rate if that student, on the date that is 1 year after the student's scheduled completion date, remains enrolled in the same program at the institution and is making satisfactory progress.

(C) At least two of the rates that result in a loss of eligibility under paragraph (a)(3), (b)(1), or (b)(2) of this section—

(*1*) Are calculated using data for the 3 most recent fiscal years, pursuant to paragraph (d)(1)(i)(B), (e)(1)(i)(B), (e)(1)(ii)(B), (f)(1)(i)(B), or (f)(1)(ii)(B) of this section; and

(*2*) Would be less than 25 percent if calculated using data for only the fiscal year for which the institution received its rate, pursuant to paragraph (d)(1)(i)(A), (e)(1)(i)(A), (e)(1)(ii)(A), (f)(1)(i)(A), or (f)(1)(ii)(A) of this section, respectively.

(D) During the 3 most recent fiscal years for which the Secretary has determined the institution's rate, a total of 30 or fewer borrowers entered repayment on a loan or loans included in a calculation of the institution's rate.

(2) For the purposes of the completion rate and placement rate described in paragraphs (c)(1)(ii)(B)(*3*) and (*4*) of this section, a student is scheduled to complete an educational program on the date on which—

(i) If the student is initially enrolled full-time, the student will have been enrolled in the program for the amount of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student; or

(ii) If the student is initially enrolled less than full-time, the student will have been enrolled in the program for the amount of time that it would take the student to complete the program if the

student remained enrolled at that level of enrollment throughout the program.

* * * * *

(7)(i) An institution that appeals on the grounds that it meets the exceptional mitigating circumstances criteria in paragraph (c)(1)(ii)(B) of this section must submit to the Secretary—

(A) Within 30 calendar days of the date that it was notified of its loss of participation, notice of its intent to appeal under that paragraph, in a format prescribed by the Secretary; and

(B) Within 60 calendar days of the date that it was notified of its loss of participation, the independent auditor's compliance attestation report, as described in paragraph (c)(7)(ii) of this section, including the specific institution's management's written assertions for which the independent auditor opines, all in a format prescribed by the Secretary.

(ii)(A) The report of the independent auditor, required for an institution's appeal under paragraph (c)(1)(ii)(B) of this section, must state whether, in the auditor's opinion, the institution's management's assertion met the exceptional mitigating circumstances criteria specified in paragraph (c)(1)(ii)(B) of this section, as provided to the auditor to examine, and is fairly stated in all material respects.

(B) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with the American Institute of Certified Public Accountant's (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended, and Government Auditing Standards issued by the Comptroller General of the United States.

(iii) The Secretary denies an institution's appeal under paragraph (c)(1)(ii)(B) of this section if—

(A) The independent auditor does not opine that the institution meets the criteria for the appeal; or

(B) The Secretary determines that the independent auditor's report or institution's management's assertion described in paragraph (c)(7)(i) of this section—

(*1*) Demonstrates that the independent auditor's report or examination does not meet the requirements of this section; or

(*2*) Is contradicted or otherwise refuted, to an extent that would render the auditor's report unacceptable, by information maintained by the Secretary.

* * * * *

(j) * * *

(1) * * *

(ii) The Secretary's notice to an institution of its draft cohort default rate includes a copy of the supporting data used in the calculation of that draft rate.

* * * * *

(4)(i) An institution may challenge an anticipated loss of participation under paragraph (a)(3), (b)(1), or (b)(2) of this section using the criteria in § 668.17(c)(1)(ii)(A).

(ii) In meeting the requirements of § 668.17(c)(1)(ii)(A) during a challenge under this paragraph, the institution's draft rate is considered to be its most recent rate.

(iii) An institution's challenge under paragraph (j)(4)(i) of this section must be submitted to the Secretary, in writing, no more than 30 calendar days after the date that the institution receives the draft default rate information from the Secretary.

(iv) The Secretary notifies an institution of the determination on its challenge before the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate is published.

(k) *Special institutions.* (1) *Applicability of requirements.* For each 1-year period beginning on July 1 of 1999, 2000, or 2001, the Secretary may determine that the provisions of paragraph (a)(3), (b)(1), or (b)(2) of this section and the provisions of § 668.16(m) do not apply to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, or a Navajo community college under the Navajo Community College Act if the institution submits to the Secretary—

(i) By July 1, 1999—

(A) A default management plan; and

(B) A certification that the institution has engaged an independent third party, as described in paragraph (k)(3) of this section; and

(ii) By July 1, 2000 and 2001—

(A) Evidence that it has implemented its default management plan during the preceding 1-year period;

(B) Evidence that it has made substantial improvement in the preceding 1-year period in the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate; and

(C) A certification that it continues to engage an independent third party, as described in paragraph (k)(3) of this section.

(2) *Default management plan.* (i) An institution's default management plan must provide reasonable assurance that it will, no later than July 1, 2002, have an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that is less than 25 percent. Measures that an institution must take to provide this assurance include but are not limited to—

(A) Establishing a default management team by engaging the chief executive officer and relevant senior executive officials of the institution and enlisting the support of representatives from offices other than the financial aid office;

(B) Identifying and allocating the personnel, administrative, and financial resources appropriate to implement the default management plan;

(C) Defining the roles and responsibilities of the independent third party;

(D) Defining evaluation methods and establishing a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans;

(E) Establishing annual targets for reductions in the institution's rate; and

(F) Establishing a process to ensure the accuracy of the institution's rate.

(ii) An institution's default management plan must be acceptable to the Secretary, after consideration of that institution's history, resources, dollars in default, and targets for default reduction.

(iii) If the Secretary determines that an institution's proposed default management plan is unacceptable, the institution must consult with the Secretary to develop a revised plan, and the institution must submit the revised plan to the Secretary within 30 calendar days of notice from the Secretary that the plan is unacceptable.

(iv) If the Secretary determines, based on evidence submitted under paragraph (k)(1)(ii) of this section, that an institution's default management plan is no longer acceptable, the institution must develop a revised plan in consultation with the Secretary, and it must submit the revised plan to the Secretary within 60 calendar days of notice from the Secretary.

(v) A sample default management plan is provided in appendix H to this part. The sample is included to illustrate additional components of an acceptable default management plan. Because institutions' family income profiles, student borrowing patterns, histories, resources, dollars in default, and targets for default reduction are

different, an institution must consider its own, individual circumstances in developing and submitting its plan.

(3) *Independent third party.* (i) An independent third party may be any individual or entity that—

(A) Provides technical assistance in developing and implementing the institution's default management plan; and

(B) Is not substantially controlled by a person who also exercises substantial control over the institution.

(ii) An independent third party need not be paid by the institution for its services.

(iii) The services of a lender, guaranty agency, or secondary market as an independent third party under paragraph (k) of this section are not considered to be inducements under 34 CFR 682.200 or 682.401(e).

(4) *Substantial improvement.* (i) For purposes of this section, an institution's substantial improvement is determined based upon—

(A) A reduction in the institution's most recent draft or published FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate;

(B) An increase in the percentage of delinquent borrowers who avoid default by using deferments, forbearances, and job placement assistance;

(C) An increase in the academic persistence of student borrowers;

(D) An increase in the percentage of students pursuing graduate or professional study;

(E) An increase in the percentage of borrowers for whom a current address is known;

(F) An increase in the percentage of delinquent borrowers contacted by the institution;

(G) The implementation of alternative financial aid award policies and development of financial resources that reduce the need for student borrowing; or

(H) An increase in the percentage of accurate and timely enrollment status changes submitted by the institution to the National Student Loan Data System (NSLDS) on the Student Status Confirmation Report (SSCR).

(ii) When making a determination of an institution's substantial improvement, the Secretary considers the institution's performance in light of—

(A) Its history, resources, dollars in default, and targets for default reduction;

(B) Its level of effort in meeting the terms of its approved default management plan during the previous 1-year period; and

(C) Any other mitigating circumstance at the institution during the 1-year period.

(5) *Secretary's determination.* (i) If the Secretary determines that an institution is in compliance with paragraph (k) of this section, the provisions of paragraph (a)(3), (b)(1), or (b)(2) of this section and the provisions of § 668.16(m) do not apply to the institution for that 1-year period, beginning on July 1, 1999, 2000, or 2001.

(ii) If the Secretary determines that an institution is not in compliance with paragraph (k) of this section, the institution is subject to the provisions of paragraph (a)(3), (b)(1), or (b)(2) of this section and the provisions of § 668.16(m). The institution's participation in the FFEL and Direct Loan programs ends on the date that the institution receives notice of the Secretary's determination.

(Approved by the Office of Management and Budget under control number 1845–0022)

3. A new appendix H is added to part 668 to read as follows:

Appendix H to Part 668—Default Management Plans for Special Institutions

This appendix is provided as a sample plan for those schools developing a default management plan in accordance with 34 CFR 668.17(k). It describes some measures schools may find helpful in reducing the number of students that default on federally funded loans. These are not the only measures a school could implement when developing a default management plan. In developing a default management plan, each school must consider its own history, resources, dollars in default, and targets for default reduction to determine which activities will result in the most benefit to the students and the school.

Core Default Reduction Strategies (from § 668.17(k)(2)(i))

(1) Establish a default management team by engaging the chief executive officer and relevant senior executive officials of the school and enlisting the support of representatives from offices other than the financial aid office.

(2) Identify and allocate the personnel, administrative, and financial resources appropriate to implement the default management plan.

(3) Define the roles and responsibilities of the independent third party.

(4) Define evaluation methods and establish a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans.

(5) Establish annual targets for reductions in the school's rate.

(6) Establish a process to ensure the accuracy of the school's rate.

Additional Default Reduction Strategies

(1) Enhance the borrower's understanding of his or her loan repayment responsibilities through counseling and debt management activities.

(2) Enhance the enrollment retention and academic persistence of borrowers through counseling and academic assistance.

(3) Maintain contact with the borrower after he or she leaves the school by using activities such as skip-tracing to locate the borrower.

(4) Track the borrower's delinquency status by obtaining reports from lenders and guaranty agencies for FFEL Program loans and from the Secretary for Direct Loan Program loans.

(5) Enhance student loan repayments through counseling the borrower on loan repayment options and facilitating contact between the borrower and lender for FFEL Program loans and the borrower and the Secretary for Direct Loan Program loans.

(6) Assist a borrower who is experiencing difficulty in finding employment through career counseling, job placement assistance, and facilitating unemployment deferments.

(7) Identify and implement alternative financial aid award policies and develop alternative financial resources that will reduce the need for student borrowing in the first 2 years of academic study.

(8) Familiarize the parent, or other adult relative or guardian, with the student's debt profile, repayment obligations, and loan status by increasing, whenever possible, the communication and contact with the parent or adult relative or guardian.

Defining the Roles and Responsibilities of Independent Third Party

(1) Specifically define the role of the independent third party.

(2) Specify the scope of work to be performed by the independent third party.

(3) Tie the receipt of payments, if required, to the performance of specific tasks.

(4) Assure that all the required work is satisfactorily completed.

Statistics for Measuring Progress

(1) The number of students enrolled at the school during each fiscal year.

(2) The average amount borrowed by a student each fiscal year.

(3) The number of borrowers scheduled to enter repayment each fiscal year.

(4) The number of enrolled borrowers that received default prevention counseling services each fiscal year.

(5) The average number of contacts the school or its agent had with a borrower who was in deferment/forbearance or repayment status during each fiscal year.

(6) The number of borrowers at least 60 days delinquent each fiscal year.

(7) The number of borrowers who defaulted in each fiscal year.

(8) The type, frequency, and results of activities performed in accordance with the default management plan.

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November 1, 1999

Part V

Department of the Interior

Bureau of Reclamation

43 CFR Part 414

Offstream Storage of Colorado River Water; Development and Release of Intentionally Created Unused Apportionment in the Lower Division States; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 414

RIN 1006–AA40

Offstream Storage of Colorado River Water and Development and Release of Intentionally Created Unused Apportionment in the Lower Division States

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This rule establishes a procedural framework for the Secretary of the Interior (Secretary) to follow in considering, participating in, and administering Storage and Interstate Release Agreements among the States of Arizona, California, and Nevada (Lower Division States). The Storage and Interstate Release Agreements would permit State-authorized entities to store Colorado River water offstream, develop intentionally created unused apportionment (ICUA), and make ICUA available to the Secretary for release for use in another Lower Division State. This rule provides a framework only and does not authorize any specific activities. The rule does not affect any Colorado River water entitlement holder's right to use its full water entitlement, and does not deal with intrastate storage and distribution of water. The rule only facilitates voluntary interstate water transactions that can help satisfy regional water demands by increasing the efficiency, flexibility, and certainty in Colorado River management.

EFFECTIVE DATE: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Ensminger, (702) 293–8659 or Ms. Erica Petacchi (202) 208–3368.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule as Adopted
III. Tribal Issues
IV. Responses to Comments
V. Procedural Matters

I. Background

This final rule was preceded by a proposed rule that we published in the **Federal Register** on December 31, 1997 (62 FR 68491). The proposed rule provided for a public comment period that ran from December 31, 1997 through April 3, 1998. In addition to oral comments submitted at one public hearing and one public meeting, we received 47 letters during the comment period on the proposed rule. Two letters commented only on the draft programmatic environmental assessment (DPEA). The respondents included two irrigation districts, three water districts, two water authorities, two water user associations, three individuals, one municipal utility, one city, one farmer's organization, one safe drinking water organization, four environmental organizations, 11 State agencies, nine Indian tribes, and seven Federal agencies. We reviewed and analyzed all comments and revised the final rule based on these comments.

The DPEA provided for a comment period that ran from December 31, 1997 through April 3, 1998. Oral comments on the DPEA were submitted at the same public hearing and the same public meeting for the proposed rule. In addition to those oral comments, we received 25 letters from 26 respondents during the comment period. The respondents included one water district, one water authority, one individual, five environmental organizations, five State agencies, six Indian tribes, and seven Federal agencies. As with the rule, we reviewed and analyzed all comments and revised the final programmatic environmental assessment based on these comments.

As a result of receiving differing comments on the definition of authorized entity and several other technical matters, we reopened the comment period on September 21, 1998 (63 FR 50183) for a 30-day period ending October 21, 1998. We asked interested parties to comment on three specific questions. We received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all comments and revised the final rule based on these comments.

Following the apportionment of water between the Upper and Lower Basins in the Colorado River Compact, Congress, by passing the Boulder Canyon Project Act of December 21, 1928 (BCPA), made a permanent apportionment of Colorado River water among the Lower Division States for use within those States. Congress also authorized the Secretary to allocate and distribute Colorado River water within these apportionments to users in the Lower Division States through contracts. Congress put the Secretary in charge of managing and operating the Colorado River in the Lower Basin of the Colorado River system (Lower Basin). This rule establishes a framework under which the Secretary will implement the contractual distribution of Colorado River water in the Lower Division States on an interstate basis.

If water apportioned for use in a Lower Division State is not consumed in that State in any year, the Secretary may release the unused water for use in another Lower Division State. Offstream storage of Colorado River water and release of intentionally created unused apportionment (ICUA) can help the Lower Division States use available Colorado River water more effectively. This rule establishes a process for the Secretary to release ICUA. The Secretary's authority to issue this final rule stems from various Federal laws and executive orders, court decisions, and decrees, particularly the BCPA. the Supreme Court opinion (Opinion) rendered June 3, 1963 (373 U.S. 546) and the decree entered March 9, 1964 (376 U.S. 340) (Decree), in *Arizona* v. *California*, as supplemented and amended. A thorough description of these authorities may be found in the Background section of the proposed rule published December 31, 1997, at 62 FR 68493.

Several State agencies commented that the narrative should be changed. In response to these comments, we are correcting two statements that were contained in the first paragraph of the preamble to the proposed rule under II. Background.

First, the statement that: "The compact defined the Colorado River Basin and divided the seven States into two basins, an Upper Basin and a Lower Basin," was incorrect and should have read: "The compact defined the Colorado River Basin and divided it into two sub-basins, an Upper Basin and a Lower Basin. The compact further specified which States are Upper Division States and which States are Lower Division States."

Second, the proposed rule preamble cited the Colorado River Compact, approved August 19, 1921, as the source of the definition for "consumptive use." The correct source of this definition is the Decree.

Several respondents, particularly State agencies, expressed concern that some of the terms in the preamble and the proposed rule could be interpreted in ways that are contrary to existing law because of imprecise wording. These respondents stated the rule should facilitate more efficient use of unused apportionment and surpluses within the existing authority of the Secretary under the Law of the River. We agree that this rule only formalizes the procedures for the Secretary to follow in considering, participating in, and administering Storage and Interstate Release Agreements and does not expand or

create authority to do so. The Secretary has the authority, under the Law of the River, to allocate and distribute waters of the mainstream of the Colorado River in the Lower Basin consistent with the Decree.

II. Final Rule as Adopted

Changes Made in This Final Rule

We have concluded that a number of changes from the proposed rule are necessary and appropriate to respond to comments. These revisions clarify the basic intent of the proposed rule and are summarized in the following paragraphs.

• *Restatement of Title and Purpose of the Rule.* We have clarified the purpose of this rule in § 414.1. This rule establishes a procedural framework for the Secretary to follow in considering, participating in, and administering Storage and Interstate Release Agreements among the Lower Division States that would permit State-authorized entities to store Colorado River water offstream, develop ICUA, and make ICUA available to the Secretary for release and use in another Lower Division State utilizing Storage and Interstate Release Agreements. Colorado River water stored in order to develop ICUA will always be put to use in the Storing State.

Under this rule, the authorized entity in the Storing State (storing entity) will not redeem storage credits for delivery to the Consuming State. For this reason, the terms "storage credits" and "redemption" are not necessary and have been deleted. Instead, when the authorized entity in the Consuming State (consuming entity) requests water under a Storage and Interstate Release Agreement, the storing entity will reduce the Storing State's consumptive use of Colorado River water, thereby developing ICUA. The Secretary will release the ICUA to the consuming entity for use in the Consuming State.

• *Definitions.* We added several definitions from the Compact, including "Colorado River Basin," "Colorado River System," and "Upper Division States," and added, deleted, or modified several other definitions in this rule to clarify the intent where necessary. New definitions were also added for "BCPA," "consuming entity," "storing entity," and "water delivery contract." The following definitions were deleted: "Contractor," "Federal entitlement holder," "Present perfected right or PPR," "storage credit," and "unused entitlement." The definition for "Interstate Storage Agreement" was revised and the term used in the rule was renamed "Storage and Interstate Release Agreement."

We redefined "authorized entity" creating a two-part definition. As to a Storing State, for purposes of this rule, an authorized entity is defined as an entity in the Storing State that is expressly authorized by the laws of that state to enter into Storage and Interstate Release Agreements and to develop ICUA. As to a Consuming State, for purposes of this rule, an authorized entity is defined as an entity in the Consuming State that has authority under the laws of that State to enter into Storage and Interstate Release Agreements and to acquire the right to use ICUA.

• *Storage of Water.* In the proposed rule, we did not clearly describe the type of water that is eligible to be stored under a Storage and Interstate Release Agreement. This rule, in § 414.3(a)(2), explains that the water stored within a Storing State for future use under a Storage and Interstate Release Agreement is water that would otherwise be unused in the Storing State, but that is within the Storing State's basic or surplus apportionment. It is important, as a policy matter, that water be offered to all entitlement holders in a Storing State before it is stored for interstate purposes so that, as one commenting State noted, a State-authorized entity will not be put in a position of "competition with the legal right to deprive lower priority entitlement holders (in the Storing State) of their Colorado River water." Accordingly, in order to qualify as unused apportionment, the water within the Storing State's basic or unused apportionment that is stored for interstate transactions under this rule must be offered first to all entitlement holders within the Storing State.

The rule, in a new § 414.3(a)(3), explains that the Consuming State's unused basic or unused surplus apportionments may also be stored in the Storing State to support an interstate water transaction. We also clarified in this section that unused apportionment of the Consuming State may be made available for storage in the Storing State only in accordance with Article II(B)(6) of the Decree. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the rule provides that the Secretary will make unused apportionment of the Consuming State available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement. This rule also has a new § 414.3(a)(6) that provides that a Storage and Interstate Release Agreement must identify a procedure for the Secretary to follow to verify and account for the quantity of water stored in accordance with the Storage and Interstate Release Agreement.

• *Development of ICUA.* We added a requirement in § 414.3(a)(9) that the Storage and Interstate Release Agreement must describe the notice given to entitlement holders, including Indian tribes, of opportunities to participate in the development of ICUA. We added a requirement in § 414.3(a)(10) that the storing entity must identify the quantity, the means, and the entity by which ICUA will be developed. We also added a paragraph in § 414.3(a)(11) to require the Storage and Interstate Release Agreement to specify the procedure for verification of the development of the ICUA. Both the means by which ICUA will be developed and the method of verification will be set forth in the Storage and Interstate Release Agreement and may vary according to the transaction. However, the means to develop ICUA must be consistent with the laws of the Storing State. Finally, under the final rule, nothing in the Storage and Interstate Release Agreement shall limit the Secretary's authority to use independent means to verify the existence of ICUA.

• *Release of ICUA.* We modified § 414.3(a) to reflect that the Secretary will be a party to Storage and Interstate Release Agreements. We added a new § 414.3(a)(12) that states that the Storage and Interstate Release Agreement will specify that the Secretary will only release ICUA to the consuming entity and will not release it to other entitlement holders. This section requires the release of ICUA be done in accordance with the terms of the Storage and Interstate Release Agreement, the BCPA, Article II(B)(6) of the Decree, and all other applicable laws and executive orders. We added a requirement in § 414.3(a)(13) that the Storage and Interstate Release Agreement specify that ICUA will be released to the consuming entity only in the year and to the extent that ICUA is developed by the storing entity. We added a requirement in § 414.3(a)(14) that the Secretary would only release ICUA after determining that all necessary actions have been taken under the rule. We added a requirement in § 414.3(a)(15) that the Secretary, before releasing ICUA, must first determine that the storing entity stored water in sufficient quantities to support the development of ICUA requested by the consuming entity and be satisfied that the storing entity either (i) has developed the quantity of ICUA requested by the

consuming entity, or (ii) will develop the quantity of ICUA requested by the consuming entity under § 414.3(f). We renumbered § 414.3(a)(9) as § 414.3(a)(16) and changed the indemnification to relate to actions of the non-Federal parties to a Storage and Interstate Release Agreement. We renumbered § 414.3(a)(10) as § 414.3(a)(17).

This final rule also includes a new § 414.3(e) that addresses the need for a valid contract with the Secretary in accordance with Section 5 of the BCPA. The release or diversion of Colorado River water for storage under this part must be supported by a Section 5 water delivery contract, except for the storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders. The release or diversion of Colorado River water that has been developed or will be developed as ICUA under this part must also be supported by a Section 5 water delivery contract. This section states that the Section 5 water delivery contract requirement of the BCPA may be satisfied by direct contracts with the Secretary, or by valid subcontracts with entitlement holders authorized to enter into subcontracts, or in the case of a consuming entity, by the Storage and Interstate Release Agreement itself. When a valid contract is in place to support the release or diversion of Colorado River water for storage, no additional authority will be required by the Secretary to authorize the storage, through a Storage and Interstate Release Agreement or otherwise.

We also have added a new § 414.3(f) that allows anticipatory releases of ICUA before the actual development of ICUA by the storing entity. This addition was made based on comments received that the demand patterns for Colorado River water in the lower basin vary widely. The times when the storing entity and the consuming entity demand water will not necessarily be concurrent. Thus, the consuming entity may have a need for ICUA before the storing entity would decrease its diversions of Colorado River water in order to develop the ICUA. We added § 414.3(f) to the rule to allow the consuming entity to have the use of ICUA before its development by the storing entity. These anticipatory releases can only be made in the same year in which ICUA will be developed. Additionally, before an anticipatory release, the storing entity must certify to the Secretary that ICUA will be developed before the end of the year in order to support an early release.

- *Financial considerations.* We added a new § 414.3(b) which states that the Secretary will not execute a Storage and Interstate Release Agreement that has adverse impacts on the financial interests of the United States. This section also provides that financial arrangements between and among non-Federal parties relating to the Storage and Interstate Release Agreement need not be included in the Storage and Interstate Release Agreement. Those financial arrangements can be set forth in separate agreements to which the Secretary will not be a party, should the parties so desire.

- *Involvement of the Secretary.* As noted above, we modified § 414.3(a) to provide that the Secretary will be a party to Storage and Interstate Release Agreements. We modified § 414.3(c) to specify:

(1) That the Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) has the authority to execute a Storage and Interstate Release Agreement on behalf of the Secretary;

(2) That the Secretary will notify the public of the Secretary's intent to participate in negotiations to develop a Storage and Interstate Release Agreement and provide a means for public input;

(3) That the factors to be considered in reviewing a proposed Storage and Interstate Release Agreement include potential impacts on tribal interests, including trust resources, and potential impacts on the Upper Division States and comments from the State agency responsible for Colorado River matters; and

(4) That after consideration of the listed factors, the Secretary may execute or decide not to execute a Storage and Interstate Release Agreement.

- *Stored water.* We modified former § 414.3(c) to conform the wording to changes made in other parts of the rule and separated the concepts that now appear in § 414.3(a)(6) and § 414.3(a)(10).

Section-by-Section Analysis of the Rule

Section 414.1 Purpose

This section explains that part 414 contains the procedures for authorized entities in the Lower Division States to follow for entering into Storage and Interstate Release Agreements with the Secretary for offstream storage of Colorado River water and for the development and release of ICUA on an interstate basis in the Lower Division States. This rule is expected to be a first step toward improving the efficiency associated with management of the Colorado River in the Lower Basin. The rule is intended to be permissive in nature and facilitate voluntary water transactions.

Section 414.2 Definitions of Terms Used in This Part

This section defines terms that are used in part 414. The following terms are based on and are to be interpreted consistent with the Decree: basic apportionment, Colorado River water, consumptive use, Decree, mainstream, surplus apportionment, and unused apportionment. The terms Colorado River Basin, Colorado River System, Lower Division States, and Upper Division States are defined in the compact. Most of the other terms were defined for the purposes of this rule to establish a common understanding.

Section 414.3 Storage and Interstate Release Agreements

This section identifies the details that must be specified in a Storage and Interstate Release Agreement regarding the storage of Colorado River water off of the mainstream and the development and release of ICUA. This section provides for verification of the quantity of water stored under a Storage and Interstate Release Agreement and verification of the quantity of ICUA developed. It also commits the Secretary to release ICUA to the consuming entity after the storing entity has certified to the Secretary, and the Secretary has verified, that the quantity of ICUA requested by the consuming entity has been developed or will be developed in that year. The release must be in accordance with the terms of the agreement and as permitted by law.

This section also specifies the factors that the Secretary will consider in determining whether to execute a Storage and Interstate Release Agreement. This section allows the assignment of all or a portion of an authorized entity's interest in a Storage and Interstate Release Agreement to other authorized entities and provides for the satisfaction of the water delivery contract requirement of Section 5 of the BCPA.

This section prescribes the limited circumstances under which ICUA can be released to a consuming entity before the development of ICUA by the storing entity.

Section 414.4 Reporting Requirements and Accounting Under Storage and Interstate Release Agreements

This section specifies the reporting requirements that storing entities must follow and stipulates that this water will be accounted for in the records maintained under Article V of the Decree.

Section 414.5 Water Quality

This section states that the Secretary does not guarantee the quality of water released under Storage and Interstate Release Agreements and further states that the United States is not liable for damages that result from water quality problems. The section states that the United States is not responsible for maintaining or improving water quality unless Federal law provides otherwise. This section also states that any entity who diverts, uses, and returns Colorado River water must comply with all applicable water pollution laws and regulations of the United States and the Storing and Consuming States, and must obtain all applicable permits or licenses regarding water quality and water pollution matters.

Section 414.6 Environmental Compliance

This section states that the Secretary will ensure environmental compliance with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and other applicable laws and executive orders. This section states that authorized entities must prepare and fund all necessary environmental compliance documents. This section also specifies that the authorized entities must fund the costs incurred by the United States in considering, participating in, and administering the proposed agreement.

III. Tribal Issues

As explained in more detail in the following section of the preamble (Responses to Comments), a number of Indian tribes have expressed reservations and/or opposition to this rule. In particular, the Colorado River Tribal Partnership, often referred to as the Ten Tribe Partnership, composed of ten Indian tribes (Chemehuevi Indian Tribe, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Jicarilla Indian Tribe, Navaho Nation, Quechan Tribe, Northern Ute Indian Tribe, Southern Ute Indian Tribe and Ute Mountain Indian Tribe) with decreed and/or claimed water rights in the Colorado River, has expressed opposition to this rule on the ground that it does not provide specific and express protection of the Tribes' interests both in making water transfers and developing tribal water on or off their reservations.

The Department believes that this rule should and will benefit Indian tribes, but it acknowledges that the rule has a limited scope. The final rule provides a framework under which State-authorized entities can request Secretarial approval to implement voluntary interstate water transactions. The rule does not address or preclude independent actions by the Secretary regarding Tribal storage and water transfer activities. With regard to the activities covered by this final rule, the Department encourages Lower Division States to enact measures and take actions that will allow Tribes to participate in opportunities covered by this rule. Also, the Secretary's approval of specific transactions under the rule will be based, in part, on an analysis of the impacts that such a transaction may have on the interests of Indian tribes. The Department provides a fuller discussion of these issues in the Responses to Comments section below.

IV. Responses to Comments

The following is a discussion of the comments received on the proposed rule and the DPEA, and our responses. First, we will address general comments and our responses. Second, we will address comments on specific provisions in the proposed rule. Third, we will address comments on the DPEA. Fourth, we will respond to specific comments received during the second comment period.

Public Comments on Proposed Rule and Responses on General Issues

The following section presents public comments on the proposed rule that are general in nature. This section includes comments on the scope of the rule, Secretarial discretion, eligibility to be an "authorized entity," the method for development of ICUA, the timing for the completion of the rule, tribal water rights, ground water issues, subsidies, power issues, concerns of California entities, potential impacts on the Upper Division States, concerns over deliveries to Mexico, environmental concerns, and economic impacts of the rule.

Scope of the Rule

Comment: Reclamation did not hold public scoping meetings on the rule.

Response: We have conducted this rulemaking in accordance with the Administrative Procedure Act. The Department expanded the public comment period for the proposed rule from 61 to 93 days. In addition to oral comments submitted at one public hearing and one public meeting, we received 49 comment letters from 47 respondents. Of these letters, 24 commented only on the rule, 23 commented on both the proposed rule and the draft programmatic environmental assessment (DPEA), and 2 commented only on the DPEA.

As a result of receiving differing comments on the definition of authorized entity and several other technical matters, we reopened the comment period on September 21, 1998 (63 FR 50183) for a 30-day period ending October 21, 1998. We asked interested parties to provide comments on three specific questions. The Department received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all pertinent comments and revised the rule based on these comments. Thus, the public has influenced the scope and formulation of this rule.

Secretarial Discretion

Comment: Does the Secretary of the Interior have the authority to enter into an agreement that binds future Secretaries to commit unused apportionment to a specific user in a particular State over a multiple-year period?

Response: Yes. The Secretary's release of ICUA in any year will be under Article II(B)(6) of the Decree. The Decree does not preclude the Secretary from releasing unused apportionment to a specific user in a particular State. The Secretary will agree to release ICUA only during the year in which it is developed by the storing entity. Moreover, under § 414.3(a)(12) of the rule, the Secretary will commit in the Storage and Interstate Release Agreement to release ICUA after the storing entity has certified to the Secretary, and the Secretary has verified in accordance with § 414.3(a)(15), that the quantity of ICUA requested by the consuming entity has been developed or will be developed in that year. Further, the ICUA released by the Secretary will be limited to the quantity developed by a storing entity during that year.

Eligibility To Be an Authorized Entity

Note: There is also a discussion on the contractual requirements necessary to qualify as an authorized entity in the section of this preamble addressing comments received during the reopened comment period.

Comment: The most frequently mentioned comment concerned the definition for the term "authorized entity." Some thought "authorized entity" should be defined broadly to enable the widest possible participation and others thought the term should be defined very narrowly to limit participation to State agencies. Indian tribes commented that the definition

should be expanded to include the tribes pursuant to the Secretary's authority under the BCPA. Tribes further commented that the proposed definition of "authorized entity" will give State government a virtual monopoly on water marketing.

Response: We agree with the general suggestion made by a State agency that "authorized entity" should be a two-part definition. This concept was supported by several other State agencies and water districts. As to a Storing State, for purposes of this rule, an authorized entity is defined as an entity that is expressly authorized by the laws of that State to: (i) Enter into Storage and Interstate Release Agreements; and (ii) develop ICUA. As to a Consuming State, for purposes of this rule, an authorized entity is defined as an entity that has authority under the laws of that State to: (i) enter into Storage and Interstate Release Agreements; and (ii) acquire the right to use ICUA. In this way the rule is intended to be permissive in nature but consistent with State law. We believe this two part definition captures comments from several State agencies that while express authority is needed to store water for use in interstate water transactions and make ICUA available, express authority is not necessary for a consuming State to receive and use ICUA. We reiterate that we fully expect the Lower Division States to enact measures that will allow the tribes to participate in opportunities covered by this rule. Moreover, this rule does not specifically address or preclude independent actions by the Secretary regarding tribal storage and water transfer activities under other authorities.

We have also expanded this rule to require that non-Federal parties to the Storage and Interstate Release Agreement provide at the Secretary's request any additional supporting data necessary to clearly set forth the details of the proposed transaction and the eligibility of the parties to participate as State-authorized entities in the proposed transaction.

Comment: It is important to acknowledge that the apportionments of Colorado River water are made specifically to the individual States. Therefore, it is important for the States to specifically designate the authorized entities who are entitled to enter into Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements") to ensure use of Colorado River water remains within a State's apportionment during any year.

Response: Apportionments of Colorado River water are made for use within each specific Lower Division State. This rule requires that the authorized entity in the Storing State be an entity that is expressly authorized under the laws of that State to: (i) enter into Storage and Interstate Release Agreements; and (ii) develop ICUA. As to an authorized entity in a Consuming State, the rule requires that it be an entity that has authority under the laws of that State to: (i) enter into Storage and Interstate Release Agreements; and (ii) acquire the right to use ICUA.

Method for Development of ICUA (Forbearance)

Comment: Several respondents commented on whether the final definition of ICUA should specify what types of measures or actions the Secretary will approve for the development of ICUA.

Response: The measures that will be used to develop ICUA are to be specified in each Storage and Interstate Release Agreement and must be verifiable. The method used to develop ICUA and the appropriate method of verification may vary according to the transaction.

The Timing for the Completion of the rule

Comment: Several respondents asked for additional time to review the proposed rule and DPEA and questioned why the completion of the rulemaking process appeared to be on a "fast track."

Response: In developing this rule we have followed the mandates of the Administrative Procedure Act. In fact, we extended the time for public review and comment from 61 to 93 days despite the fact that this rule only formalizes the existing authority of the Secretary to enter into Storage and Interstate Release Agreements and does not expand or create this authority. Moreover, we reopened the comment period for an additional 30 days to obtain further comments. This extended review period has given the public numerous opportunities to review this rule. In addition, we reviewed and analyzed the comments submitted during the reopened comment period and revised the rule as needed. Finally, the Secretary will notify the public of the Secretary's intent to participate in negotiations to develop a Storage and Interstate Release Agreement and give the public further opportunity to comment before any specific transaction is implemented.

Tribal Water Rights

Comment: The rule should include an introductory section that recognizes Indian holders of present perfected rights are not required to beneficially use their water, are not subject to a loss or reduction in their water for non-use or non-beneficial use, and are not subject to State law or State regulatory control for the on-reservation use of their entitlements.

Response: We recognize the unique status of present perfected rights holders under the Decree and agree that tribal present perfected rights holders are not subject to a loss or reduction in their water rights for non-use. The 1979 supplemental decree entered March 9, 1979 (439 U.S. 419) by the Supreme Court in *Arizona* v. *California* quantifies and prioritizes tribal rights to the use of Colorado River water. The 1979 supplemental decree states that: "Any water right listed herein may be exercised only for beneficial uses." We do not believe it is necessary that the information be included in an introductory section for the rule. We agree that Indian holders of present perfected rights are not subject to State law or State regulatory control for the on-reservation use of their entitlements.

Comment: Indian tribes should be permitted to enter into intrastate or interstate agreements for offstream storage and marketing of their unused water off the reservation under the statutory and contractual authority vested in the Secretary.

Response: This rule does not apply to intrastate transactions. This rule applies only to interstate transactions. As explained in more detail below, we believe that Storage and Interstate Release Agreements under this rule can be implemented in a manner that will provide opportunities for tribes to benefit.

Comment: Several tribes commented that they have been unable to fully benefit from their water rights because of the Federal government's failure to provide the tribes with the necessary financial, technical, and political assistance to fully develop their water resources.

Response: We acknowledge this concern and recognize that a number of tribes have been unable to use their entitlement due to the lack of distribution and delivery systems. We are committed to making progress to help tribes make better use of their water rights. For example, a Central Arizona Project (CAP) distribution system has been built for the Ak-Chin Tribe. A distribution system for the Fort McDowell Tribe is under construction and we have entered into a repayment contract with the Gila River Indian Community for construction of a CAP distribution system. Five of the ten

Indian tribes with contracts for delivery of CAP water have utilized their statutory right to lease or transfer water. More specifically, the Ak Chin, Fort McDowell, Tohono O'odham, Salt River, and Yavapai Prescott tribes have leased or transferred CAP water.

Comment: Indian tribes should receive compensation for their unused or undeveloped tribal water resources because of the Federal government's failure to provide the tribes with the necessary assistance to fully develop their water resources.

Response: The issue of compensating the tribes in connection with the development of tribal water rights is beyond the scope of this rule.

Comment: The Department should permit tribal governments to market their Central Arizona Project allocations on the same basis as the State. Central Arizona Water Conservation District's (CAWCD) non-Indian subcontractors have the capability to take direct delivery of CAP water but have not taken delivery of substantial quantities, primarily for economic reasons. Tribes with CAP allocations, with the exception of the Ak-Chin Indian Community, are not able to take delivery or put to use any substantial quantity of CAP water because the distribution and delivery systems that are needed to allow the tribes to put this water to use have not been constructed.

Response: We reiterate that we are encouraging the Lower Division States to enact measures and take actions that will allow the tribes to participate in opportunities covered by this rule. One such example of tribal participation in a Storage and Interstate Release Agreement would be affording tribes the opportunity to develop underground storage facilities where Colorado River water could be stored. In addition, we note that the State of Arizona is exploring the use of facilities on tribal lands for storage of Colorado River water. Thus, tribes could participate by leasing the use of these facilities to the storing entity. Moreover, this rule does not specifically address or preclude independent actions by the Secretary regarding tribal storage and water transfer activities. As stated above, we feel that there has been progress in helping the tribes create irrigation infrastructure or otherwise put their CAP water to use and is committed to moving forward with this program. Only authorized entities can store water under this rule to support an interstate water transaction. No holders of CAP allocations have a right to store this water for an interstate transaction unless they can qualify as an authorized entity under this rule. Only unused water that is not requested by an entitlement holder (including tribes) can be stored to support a Storage and Interstate Release Agreement. With respect to the development of ICUA, the rule requires the Storage and Interstate Release Agreement to describe the notice given to entitlement holders, including Indian tribes, of opportunities to participate in the development of ICUA.

Ground Water Issues

Comment: Because banked water is fungible, the rule should address both intrastate and interstate water storage to preclude a Storing State from circumventing any restrictions that the Department might impose on the storage or recovery of water stored under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). Several respondents expressed concern that an authorized entity may store water in an aquifer that is hydraulically connected to an aquifer that holds tribal water.

Response: The rule specifies in § 414.3(c) that the Secretary will consider various factors in reviewing a proposed Storage and Interstate Release Agreement, including potential effects on trust resources, potential effects on entitlement holders, which includes Indian tribes, and environmental impacts. We reiterate that intrastate transactions are not covered under this rule.

Comment: One respondent stated that the rule should expressly address the legal status of banked CAP water. The respondent is concerned that the banked water will be considered CAP water under Federal law and non-Indian water users in Arizona will accrue millions of acre-feet of credits with the sanction of Reclamation. The subsequent recovery of the stored water will result in significant increases in ground water pumping over and above that currently authorized in accordance with State law and the tribes might be precluded from pumping the remaining ground water reserves because those reserves will increasingly take on the character of CAP water.

Response: As noted in § 414.3(c), the potential effects of the proposed measures on the environment, the economy, and trust resources are among the factors the Secretary will consider when reviewing the proposed Storage and Interstate Release Agreement.

Comment: Revise the rule to incorporate the acre-foot for acre-foot ground water pumping restrictions from the amended CAP master repayment contract and the CAP agricultural subcontracts. Reclamation has a trust responsibility to protect Indian ground water from continued ground water mining by non-Indian interests.

Response: Nothing in this regulation modifies the ground water protections found in the CAP contracts or limits the Department's ability to protect trust resources. Also, as noted in § 414.3(c), the potential effects of the proposed measures on the environment, the economy, and trust resources are among the factors the Secretary will consider when reviewing a Storage and Interstate Release Agreement.

Subsidies

Comment: Several respondents stated that the Department should not allow extra non-reimbursable expenses to occur in storing water or delivering it to a new location. There were also suggestions that, with respect to Arizona, revenue from the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") should be collected to help repay CAWCD's debt to the United States for the CAP.

Response: We agree that a proposed Storage and Interstate Release Agreement cannot obligate the United States to incur extra non-reimbursable expenses to store water or deliver it to new locations. The Secretary will review the provisions of every proposed Storage and Interstate Release Agreement for its financial impacts on the United States and will not execute any agreements that may have adverse financial impacts on the United States. In addition, the United States is currently seeking to resolve the recovery of CAWCD's debt to the United States.

Power Issues

Comment: Several respondents stated that Reclamation should analyze the impacts of the rule on power customers in the State of Arizona. When water passes through the Hoover and Davis generators on the way to storage in Arizona, there will be additional power production but CAWCD will incur increased pumping costs to move the water to storage. When stored water is withdrawn by a Nevada entity in the future, less water will pass through the Hoover and Davis generators, resulting in less power production at those dams. When Arizona ground water pumpers who take CAP water through in-lieu storage are required to go back to ground water pumping, they may require more power during years when stored water is withdrawn from the bank and generation is reduced at Hoover and Davis Dams. The rule should provide for compensation of power customers to protect them from subsidizing water banking.

Response: Under this rule, the offstream storage of Colorado River water and the Secretary's release of ICUA may influence the timing of power generation at the Hoover, Parker, and Davis powerplants. Reclamation conducted an analysis to evaluate the potential impacts of this rule on Hoover and Parker-Davis power customers. The analysis reflects that under this rule the quantity of energy foregone in any one year between 1998 and 2017 will result in a loss of less than 0.5 percent. Between 1998 and 2017, the quantity of Colorado River water released from mainstream reservoirs will be equivalent to the quantity that otherwise would have been released without the implementation of this rule.

Section 6 of the BCPA notes "That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power." The Secretary manages and operates these reservoirs for multiple, often conflicting purposes, through powers vested by Congress. The principal source of the Secretary's power is the contract power under Section 5 of the BCPA to allocate and distribute mainstream water within the boundaries established by that Act. Each year, the Secretary develops and adopts an Annual Operating Plan (AOP) for the Colorado River reservoirs. During the AOP process, the Secretary consults with the Basin States and other interested parties, including the power users. The Secretary is mindful of the Federal contracts with power users for supply of electric service from hydroelectric powerplants on the Colorado River and will seek to minimize changes in power production that result from the Secretary's activities regarding river operations. However, because of Section 6 of the BCPA, power users are a junior priority for use of Colorado River water.

Concerns of California Entities

Comment: Several California entities expressed concern that the rule should acknowledge and be consistent with the comprehensive plan being developed by California water agencies to reduce California's future use of Colorado River water (California 4.4 Plan).

Response: The Department places great emphasis on the necessity for the implementation of a California 4.4 Plan. We do not, however, believe that this rule needs to address the California 4.4 Plan. This rule is intended to be of general application and to apply equally to each of the three Lower Division States.

Comment: Some respondents asked for assurance that the rule will provide for storage of conserved water, such as water that is anticipated to result from water conservation in the Imperial Irrigation District (IID) that is proposed to be transferred to the San Diego County Water Authority (SDCWA).

Response: The proposed transfer of water from IID to SDCWA is an intrastate transaction that is not covered by the rule. For conserved water to be stored by an authorized entity for purposes of an interstate water transaction under this rule, it must first be offered to all entitlement holders in the State in which it was conserved.

Comment: In years when surplus water is needed to keep Metropolitan Water District's Colorado River Aqueduct full, a conflict will arise among entities who claim surplus water if the Secretary does not make a sufficient level of surplus water available to satisfy both Metropolitan Water District's demand and diversions for offstream storage under Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements").

Response: Surplus is divided among the Lower Division States under the Decree. Surplus apportioned to the State of California under the Decree, and thus available for use consistent with the priority system applicable to California, is not subject to storage under this rule by authorized entities in Nevada or Arizona unless entitlement holders in California choose not to exercise their rights to use surplus water.

Potential Impacts on the Upper Division States

Comment: The rule should not be allowed to impact the water supplies available to the Upper Basin and the Upper Basin should not lose any yield or take increased risks because of increased equalization that might occur as a result of interstate water storage agreements.

Response: We agree with this comment from a State agency and notes that this rule will not be used to justify more liberalized surplus determinations that will allow an increase in equalization releases from Lake Powell. Section 414.3(b) of this rule was modified to include potential impacts on the Upper Division States among the factors that the Secretary will consider in considering, participating in, and administering a Storage and Interstate Release Agreement.

Comment: The rule should be modified to include a statement that the rule does not change or expand the authorities under the Law of the River or the apportionments made to the individual States under the Law of the River. The rule should also state that its intent is to provide for efficient use of unused apportionment and surpluses but that each State should keep its consumptive use of Colorado River water within the apportionments made to it under the Law of the River.

Response: We agree with this comment from a State agency that this rule does not change or expand existing authorities under the Law of the River or change the apportionments for use of water within the individual States. We modified § 414.1 Purpose to state this. We also agree that each Lower Division State must operate within the limits of the apportionment of Colorado River water made for use within that State but do not believe it is necessary to include this statement in the rule.

Concerns over Deliveries to Mexico

Comment: The DPEA states that a minor reduction will occur in the quantity of surplus water available for delivery to Mexico over the long term without explaining what a minor reduction is or what studies have been done to quantify this.

Response: The quantity of water available for delivery to Mexico is expected to decrease by an average of 23 thousand acre-feet (kaf)/year from 1999–2015 when storage is occurring with the rule. This is about a one percent decrease annually in the total quantity of water projected to reach Mexico (2.487 million acre-feet (maf) without this rule and 2.464 maf with this rule). In addition, this decrease would affect flood control releases only during this same time and would have only a very minimal effect on projected surplus flow in years beyond 2015.

These projections are based on analysis completed by Reclamation using the Colorado River Simulation Model, which is used to project long-term conditions relating to water supply on the Colorado River from Lake Mead to Mexico. The analysis used historical virgin runoff data from 1906–1995 and water use or demand schedules that have been provided by the Colorado River Basin States for the simulated future period 1999–2015. In addition the model includes requirements in the long-range operating criteria for the Colorado River.

Environmental Concerns

Comment: Efficiency improvements in river management and the storage of

Colorado River water in underground aquifers means less water is available for environmental purposes, such as the riparian and aquatic ecosystems of the river, including the river and delta region in Mexico.

Response: Offstream storage of Colorado River water under Storage and Interstate Release Agreements should not have a measurable effect on riparian and/or aquatic ecosystems of the river or the delta region of Mexico. During the next few years, releases from Hoover Dam are expected to continue to be about 10 maf/year for downstream use in the United States and Mexico. In addition, flood control releases are projected to average 788 kaf/year during the period 1999–2015. Offstream storage could decrease flood control releases reaching Mexico by an average of 23 kaf/year.

At present, Reclamation has no authority or discretion over the type of use or location of use of Colorado River water once it reaches Mexico. The Mexican Water Treaty of 1944 and the Opinion and Decree control and limit Reclamation's releases from Hoover Dam to amounts that meet the conditions within each. Water delivered to meet Treaty requirements is diverted at Morelos Dam where Mexican law governs how it is put to use. In times of flood control operations, Colorado River water entering Mexico in excess of treaty requirements is under Mexico's jurisdiction. Once flows reach the Republic of Mexico, any uses for environmental purposes would have to be authorized by Mexico.

It is possible that implementation of this rule may create additional flexibility to potentially make water available for fish and wildlife purposes as part of the ongoing Lower Colorado River Multi-Species Conservation Program (MSCP). Under this concept, water stored offstream one year could potentially be used to meet fish and wildlife purposes in a later year.

Comment: The level of environmental compliance proposed by Reclamation is inadequate and Reclamation should complete a full environmental impact statement (EIS) on the proposed rule as well as the entire operation of the Colorado River.

Response: The programmatic environmental assessment (PEA) was prepared to identify and clarify issues, describe the level of environmental impacts associated with implementation of the proposed rule, and to determine whether to prepare a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS). Compliance for each Storage and Interstate Release Agreement will reference and tier off from the PEA for this rule. Based on the analysis in the PEA, consultation and coordination with the Fish and Wildlife Service, and public input and comments, we have concluded that implementation of the proposed rule will not have a significant effect on the human environment. As a result, a FONSI has been prepared to complete NEPA compliance for the rule.

As explained previously, this rule develops a framework that the Secretary will utilize in reviewing and evaluating whether to execute a specific transaction for offstream storage of Colorado River water under a Storage and Interstate Release Agreement. This rule does not increase nor abrogate the existing authority of the Secretary. When the storing and consuming entities enter into negotiations with the Secretary for the development of a Storage and Interstate Release Agreement, the Secretary will have the specific details needed to determine the potential impacts of the proposed action and can then determine the appropriate level of NEPA compliance required for that action.

In addition, the Department believes the preparation of an EIS on the entire operation of the Colorado River is not required. Movement of water will be through existing facilities on the Colorado River and is within the current and projected routine operations of the lower Colorado River. Thus, it is not necessary to complete a comprehensive EIS on river operations.

Comment: Implementation of the rule may potentially impact fish and wildlife resources along the Colorado River downstream from Lake Mead.

Response: The DPEA evaluated the potential impact to fish and wildlife resources for a proposed scenario in which 1.2 maf would be stored in Arizona under a Storage and Interstate Release Agreement to allow an authorized entity in Nevada to meet its future water needs. The effects of placing Colorado River water in offstream storage were evaluated at two incremental storage rates, 100 kaf/year and 200 kaf/year with future development of ICUA and the associated release of water from Lake Mead limited to a maximum of 100 kaf, in accordance with Arizona law, in any year.

No significant impacts were identified on fish and wildlife resources as a result of this analysis. Consultation with the Fish and Wildlife Service concluded that fluctuations in water surface elevations associated with the most likely case storage and retrieval scenarios are not likely to adversely affect listed species or their designated critical habitat.

Economic Impacts of the Rule

Comment: The Initial Regulatory Flexibility Analysis states that the future cost burden of obtaining alternative supplies for Southern California water users is not attributable to or the result of the proposed rule. The rule may reduce the quantity of Colorado River water available for diversion to Southern California that is apportioned for consumptive use in Arizona and/or Nevada but not consumed in those States, making California expend funds sooner than planned to obtain alternative water supplies.

Response: Absent the rule, each Lower Division State may store its unused basic apportionment and surplus apportionment offstream for future intrastate use. Arizona is currently taking all of the 2.8 maf basic apportionment of Colorado River water available for use in Arizona. Therefore, the only water that California may no longer be able to use is Nevada unused basic apportionment. Nevada's consumptive use was 245.3 kaf in 1998, resulting in 54.7 kaf of unused apportionment. Projections show Nevada utilizing its full basic apportionment by 2007. This rule may impact southern California in that it enables Nevada to store its declining quantity of unused apportionment in Arizona for the short period it may be available. To the extent surplus is available during this time, impacts on California are lessened. In the long run, the rule should have little net impact on the expenditure of funds by California water users to obtain alternative water supplies.

We reiterate that California must reduce its reliance on the Colorado River by conserving water or obtaining alternative water sources. California must continue moving forward in its efforts to implement a California 4.4 Plan to live within the 4.4 maf of Colorado River water apportioned for use in California and this rule will add flexibility that may be of help in implementing the California 4.4 Plan.

Comment: Some tribes asserted that the rule allocates to the States water that is reserved to the tribes and has a disproportionate, significant, and detrimental economic impact on the tribes in the Lower Basin.

Response: We do not agree with this view. Under the rule, only water within a State's apportionment that is not used by entitlement holders within that State may be stored offstream for interstate purposes. Nothing in this rule precludes

any entitlement holder, including a Tribe, from using its Colorado River water entitlement. The potential effects of the proposed measures on the environment, the economy, and trust resources are among the factors the Secretary will consider when evaluating the Storage and Interstate Release Agreement. This review process will help ensure that tribal rights will be protected under this regulation.

Comment: The Benefit-Cost Analysis shows that the overall impact of the proposed rule is not significant. Please explain how this was determined and what the threshold was or refer the reader to a specific page of the Benefit-Cost Analysis for the information.

Response: The threshold for whether a proposed rule is significant is defined in both the Small Business Regulatory Enforcement Fairness Act and the Unfunded Mandates Reform Act of 1995. The Benefit-Cost Analysis reflects that the proposed rule is not a major rule (impacts are not significant) because the economic impact upon the regional and United States economy in any one year does not exceed the threshold; i.e., it is never greater than or equal to $100 million. However, even though the rule does not have a significant annual economic effect on the economy, it is still considered a significant rule because it raises novel legal or policy issues. See pages 38–42 and 44–46 of the Benefit-Cost Analysis to see the findings that led to the determination of no significant economic impact.

Comment: The Executive Summary of the Benefit-Cost Analysis refers to two water supply models, "A70" and "P80." To better understand the potential effects of both A70 and P80 criteria, state the water supply benefits resulting from the P80 criterion and indicate the incremental quantity of additional surplus water made available under P80.

Response: The benefit-cost analysis shows that the benefits of AWBA's banking program are smaller under P80 (a more liberal surplus criterion that will tend to increase the risk of shortages) than A70 (a more conservative surplus criterion that will tend to reduce the risk of shortages). Under P80 surplus criteria, it is more likely that all valid water demands within the Lower Division States will be met from instream flows. Therefore, demand for ICUA by a Consuming State is lower than under A70. Total net economic benefits for the study period (1998–2017) at the regional level are shown at the bottom of page 2 of the executive summary for the Benefit-Cost Analysis. Because surplus conditions are likely to continue for several years, we did not further analyze that alternative in the Biological Assessment (BA) that we prepared for the proposed rule.

Comment: There were a number of editorial comments on the Benefit-Cost Analysis and the Initial Regulatory Flexibility Analysis.

Response: We have reviewed and considered the comments submitted by a water district and have adopted many of the suggestions into the text of the final Benefit-Cost Analysis and the final Regulatory Flexibility Analysis.

Comment: Some tribes commented that allowing States to use "unused tribal water" and imposing limitations on the tribes" ability to use their reserved water potentially interfere with the tribes' protected property rights.

Response: We do not agree with this statement. All Colorado River water available to the Lower Division States is apportioned for use in the individual States. Any water within a State's apportionment that is unused by tribes or non-Indian entitlement holders is available to junior entitlement holders in that State under the Secretary's priority system for the Colorado River. Only water that is not used by entitlement holders is eligible to be used for an interstate transaction under this rule. Thus, there is no interference with tribal property rights.

Comment: One tribe asserted that the tribes' lack of opportunity to participate in interstate transactions on the same basis as the States under the rule violates Title VI of the Civil Rights Act of 1964, which states that "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Response: We do not agree that the tribes will be denied an opportunity to participate under this rule or that this rule results in discrimination within the meaning of the Civil Rights Act. We will require that all entitlement holders, whether tribal or non-tribal, are treated equally under the rule. We will monitor efforts by the States and authorized entities to extend benefits to the tribes under this rule and will, in the future, assess whether we need to review or revise this rule to provide additional opportunities to the tribes.

Public Comments on Proposed Rule and Responses on Specific Provisions

The following section presents public comments on the proposed rule that apply to specific provisions in the rule.

Comments Concerning the Title of the Rule

Comment: The title of the rule should not mention the "redemption of storage credits" because this term lack clarity and is ambiguous. The rule should provide that Colorado River water stored offstream under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will be used in the State in which the water is stored and that the Secretary will release ICUA rather than deliver storage credits.

Response: We agree with the concept suggested by several State agencies, a water district, and a water authority and have modified the title to read, "Offstream Storage of Colorado River Water and Development and Release of Intentionally Created Unused Apportionment in the Lower Division States."

Comments Concerning § 414.1—Purpose

Comment: The purpose section should not use terminology that is vague and implies that a Storing State will create and redeem storage credits because the Colorado River water that is stored offstream will always belong to the Storing State. Amend the language to establish the intent that Storage credits will be redeemed in the State in which water will be stored and the Secretary will release ICUA rather than deliver storage credits under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement").

Response: We have adopted the suggestions from several State agencies, a water district, and a water authority to describe the proposed transactions under this rule in terms that are clear and unambiguous. In lieu of developing and redeeming storage credits, we have changed this rule to reflect that the Secretary will release ICUA to consuming entities under Storage and Interstate Release Agreements.

Comment: Because the Secretary's approval of Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements") could delay approvals, the Secretary's authority for the Department's responsibilities under the rule should be delegated to Reclamation, subject to the right to appeal the Regional Director's decisions through the Department.

Response: Under the rule, the Secretary will not approve the Storage and Interstate Release Agreement but will instead be a party to the agreement. The rule provides that the Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional

Director) shall have the authority to develop, negotiate, and execute a Storage and Interstate Release Agreement on behalf of the Secretary.

Comment: The rule should use precise terminology that cannot be interpreted in ways that are contrary to existing law. The rule should contain a narrative that states the actions contemplated under this rule are deemed within the authority of the Secretary under the Law of the River and that the rule does not change or expand the Secretary's authorities. This narrative should emphasize the intent of the rule is to provide for more efficient use of unused apportionment and surpluses within the "Law of the River."

Response: We revised this rule in several places to clarify the intent. In addition, we agree with the suggestion from several State agencies and clarified the rule to state that it does not change or expand the Secretary's authority under the Law of the River. This rule only formalizes the existing authority of the Secretary to develop, negotiate, and execute Storage and Interstate Release Agreements and does not expand or create this authority. As stated in the preamble to the proposed rule that was published on December 31, 1997, this rule will increase the efficiency, flexibility, and certainty in Colorado River management.

Comments Concerning § 414.2—Definitions

Comment: As addressed above in the discussion of general issues, the most frequently mentioned comment was regarding the definition for the term "authorized entity."

Response: As discussed previously under general issues, we have changed the definition of "authorized entity" to consist of two parts, with different definitions for Consuming States and Storing States. Please refer to that discussion. As a result of receiving differing comments on the definition of authorized entity and several other technical matters, we reopened the comment period for a 30-day period. We requested interested parties to provide comments on three specific questions. We received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all comments and revised the rule based on these comments. Please refer to that discussion.

Comment: Modify the rule to include the definitions for "Colorado River Basin" and "Colorado River System" as defined and used in the Colorado River Compact.

Response: We have adopted these suggestions from a State agency and included these definitions in this rule.

Comment: Modify the definition of "Consuming State" to clarify that this means the State where ICUA is or will be used.

Response: This suggestion from several entities, including State agencies, was adopted to clarify the actual way the proposed water transactions will work.

Comment: The narrative in the preamble for the proposed rule incorrectly attributed the definition of "consumptive use" to the Colorado River Compact of November 24, 1922.

Response: We agree with several State agencies, a water authority, and a water district that the definition was incorrectly attributed to the Compact. As the respondents explained, the term "consumptive use" is defined by Articles I(A) and I(C) of the Decree.

Comment: Modify the definition of "Interstate Storage Agreement" (now termed a "Storage and Interstate Release Agreement") to delete reference to "redemption of storage credits" and make other changes consistent with the incorporation of changes to other definitions.

Response: We agree with the suggestions from several entities, including State agencies, that the definition should emphasize that the Storage and Interstate Release Agreement provides terms for offstream storage of Colorado River water by a storing entity, the subsequent development of ICUA by the Storing State consistent with the laws of the Storing State, a request by the storing entity to the Secretary to release ICUA to the consuming entity, and the release of ICUA by the Secretary to the consuming entity.

Comment: The definition for "Interstate Storage Agreement" (now termed a "Storage and Interstate Release Agreement") in the proposed rule states that the agreement may include other entities determined to be appropriate to the performance and enforcement of the agreement without indicating who those entities might be or who makes the determination that their inclusion is appropriate.

Response: This rule has been revised to clarify that the decision to include other entities will be determined by the consuming and storing entities and the Secretary during the negotiation of a Storage and Interstate Release Agreement.

Comment: Delete the term "storage credit" from the proposed rule as it lacks clarity.

Response: We have adopted this change, suggested by several entities, including State agencies, a water authority, and a water district.

Comment: Modify the definition of "Storing State" to clarify that water stored offstream under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will be used in the Storing State in place of water within the Storing State's apportionment that the Storing State otherwise would have diverted from the mainstream.

Response: We have modified the definition of Interstate Storage Agreement and renamed it "Storage and Interstate Release Agreement" in this rule. The modified definition reflects that water stored offstream under a Storage and Interstate Release Agreement will be used in the Storing State.

Comment: Delete the definition of "unused apportionment" and in its place, insert definitions for "unused basic apportionment" and "unused surplus apportionment." The intent of the suggestion is to clarify that, with the determination of a water supply condition by the Secretary, a State is receiving either a normal, surplus, or shortage apportionment. Also, revise the definition to clarify that to be unused, the water otherwise would not have been diverted and that water conserved or saved through an agreement between two entitlement holders is eligible for storage.

Response: The Department did not adopt these changes that were suggested by a water district. The AOP determines whether a State is receiving a normal, surplus, or shortage apportionment, and that decision is unaffected by this rule. Also, only water that is not used by entitlement holders in the applicable State's priority system for purposes other than storage for use in interstate transactions is eligible for storage for use in interstate transactions under this rule.

Comment: Delete the term "unused entitlement" from the proposed rule.

Response: We have adopted this change, suggested by several entities, including State agencies and a water district.

Comments Concerning § 414.3—Storage and Interstate Release Agreements and Redemption of Storage Credits

Comment: As discussed earlier under Purpose, there should be a statement that the actions contemplated under this rule are within the Secretary's authority

under the Law of the River and that it is not the intent of this rule to change or expand the Secretary's authorities. This narrative should also emphasize an intent to provide for more efficient use of unused apportionment and surpluses within the "Law of the River" but specify that water users in the Lower Division States must plan to live within the apportionments made to them under the "Law of the River."

Response: We agree with this suggestion from a State Agency to clarify that this rule is deemed to be within but does not expand the Secretary's authority. The preamble to this rule includes a section to provide further explanation of the purpose of this part. This rule is not intended to change or expand the Secretary's authorities under the "Law of the River." This rule is intended to facilitate more efficient use of unused apportionment and surpluses within the "Law of the River" in the Lower Division States.

We also believe that this rule, in conjunction with the implementation of the California 4.4 Plan and the development of surplus criteria, will provide a framework for the Lower Division States to hold consumption within the apportionments available for use within those States.

Comment: Conform this section of the rule with previous changes that delete the reference to the term, "redemption of storage credits."

Response: We have adopted this change, suggested by several entities, including State agencies, a water authority, and a water district. As discussed previously, this rule will provide for offstream storage of Colorado River water in a Storing State, the subsequent development of ICUA by the storing entity for release by the Secretary to a consuming entity, and the recovery of the stored water for use in the Storing State.

Comment: Delete the reference to Article II(B)(6) of the Decree in the first sentence under § 414.3(a) because the Decree does not cite a legal authority for entering into Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements").

Response: We agree that "Storage and Interstate Release Agreements" are not referenced in the Decree and have modified § 414.3(a) of the rule. However, Article II(B)(6) of the Decree provides authority for the Secretary to (1) make an annual determination under this rule of the availability of ICUA and (2) release any such water in accordance with the terms of a Storage and Interstate Release Agreement.

Comment: Delete the last sentence of § 414.3(a), that reads, "An Interstate Storage Agreement (now termed an "Storage and Interstate Release Agreement") will allow a storing entity to store unused entitlement and/or unused apportionment for the credit of an authorized entity located in a Consuming State and will provide for the subsequent redemption of the credit."

Response: We agree with this comment from a State agency and have modified this rule to incorporate this change.

Comment: A senior priority holder in California should not be allowed to agree to make available unused apportionment for storage in another State without first obtaining the agreement of California's junior priority holders.

Response: Under this rule, only water that is unused by all entitlement holders in the applicable State's priority system is eligible for storage by an authorized entity for use in an interstate transaction.

Comment: One respondent noted that its contract with the Secretary allows it to request Reclamation to approve an exchange, lease, or transfer of its water entitlement. The respondent further stated its intent to pursue interstate marketing opportunities and position its Colorado River water supply as an unused apportionment that may be released annually for use in the other Lower Division States under the Decree.

Response: The Department recognizes that the entitlement holder's contract allows it to request approval of an exchange, lease, or transfer and notes that any change in the place of use or type of use of the entitlement is subject to the Secretary's approval. The development of ICUA under a Storage and Interstate Release Agreement may involve the exchange, lease, or transfer of Colorado River water under an individual entitlement holder's contract. Any such exchange, lease, or transfer would be subject to Secretarial approval unless the entitlement holder's contract specifies otherwise. Moreover, to participate under this rule as an authorized entity in a Storing State, that entity must be expressly authorized under State law.

Comment: The rule should be modified to allow authorized entities in California and Nevada to have equal access to store that portion of Arizona's Colorado River apportionment that is not otherwise put to use by entitlement holders within Arizona. Also, authorized entities in California and Nevada should have equal access to the quantity of ICUA that Arizona will make available to consuming entities when those entities request it.

Response: We recognize these concerns expressed by a State agency and a water district but do not believe it is appropriate to establish an allocation method in this rule. Storage and Interstate Release Agreements are voluntary interstate water transactions. The Secretary will not require authorized entities of one State to enter into Storage and Interstate Release Agreements with authorized entities in another State. We encourage each storing entity to consider the needs of all consuming entities under prospective Storage and Interstate Release Agreements.

Comment: Modify § 414.3(a) to allow a more general description of the entities by which Colorado River water will be stored and the storage facilities in which it will be stored.

Response: We did not accept this recommendation. It is necessary to clearly identify the actual entity that will store Colorado River water under the Storage and Interstate Release Agreement and the facility where it will be stored so that a thorough review of the impacts of the storage on environmental and trust resources can be performed.

Comment: Specify in § 414.3(a) that the water to be stored will be within the basic apportionment or the surplus apportionment of the Storing State or unused basic apportionment or unused surplus apportionment of the Consuming State. Any unused apportionment of the Consuming State may only be made available by the Secretary to the Storing State under Article II(B)(6).

Response: We agree with this suggestion from several State agencies and a water district, and have modified this rule to incorporate this change.

Comment: Specify in § 414.3(a) the maximum quantity of ICUA that will be available for release to the consuming entity under the agreement.

Response: We agree with this suggestion from several State agencies, a water authority, and a water district. We have modified this rule to incorporate this change.

Comment: Specify in § 414.3(a), by January 31, the maximum quantity of ICUA that will be available for release and delivery to the consuming entity under the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") in that current year.

Response: We did not accept this suggestion from a water district. The rule leaves the determination of this detail to the Storage and Interstate

Release Agreement that will be negotiated among the parties to that agreement. Further, this subject involves accounting matters that are set forth in § 414.4.

Comment: Specify in § 414.3(a) that the consuming entity may not request ICUA in a quantity that exceeds the quantity of water then in storage under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") in the Storing State. Several respondents suggested deleting the statement from the proposed rule that water then in storage under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") may not be recovered within the same calendar year in which the water was stored offstream. Another respondent suggested retaining this statement.

Response: We agree with the suggestion from several State agencies, a water authority, and a water district that the Storage and Interstate Release Agreement must specify that the consuming entity may not request a quantity of ICUA in excess of the quantity of water then in storage under a Storage and Interstate Release Agreement. The quantity of water stored under a Storage and Interstate Release Agreement serves as the basis for the quantity of ICUA that may be developed under the Storage and Interstate Release Agreement. This rule allows Colorado River entitlement holders in the Storing State the option to use the water previously stored under a Storage and Interstate Release Agreement, under a direct contract with the Secretary, or under a valid subcontract with an entitlement holder authorized to enter into subcontracts. However, the rule also allows other means consistent with Storing State law to develop ICUA. We do not agree with the suggestion from a water district to retain the requirement that water stored under a Storage and Interstate Release Agreement may not be recovered within the same year the water is stored offstream. The parties may agree to permit the consuming entity to request and receive ICUA during the same year water is stored under a Storage and Interstate Release Agreement. However, the applicable law of the Storing State may not permit a consuming entity to request the delivery of a quantity of ICUA that exceeds the quantity of unused apportionment that was stored offstream for that consuming entity under a Storage and Interstate Release Agreement as of the end of the prior year.

Comment: Modify § 414.3(a) to specify that, by a date certain to be specified in the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"), the consuming entity will provide notice to the Lower Division States and to the Secretary of its request for a specific quantity of ICUA in the following calendar year.

Response: We agree with this suggestion from two State agencies and a water authority and have modified this rule to incorporate this intent. The revised provision is now renumbered § 414.3(a)(7). The rule will allow the parties and the Secretary to reach a mutually acceptable date for the notice in the Storage and Interstate Release Agreement.

Comment: Modify § 414.3(a) to specify that the date when the consuming entity will provide notice to the Lower Division States and to the Secretary will be the later of (i) November 30 or (ii) within 45 days after the AOP has been transmitted to the Governors of the Colorado River Basin States. This change will allow more flexibility in case the AOP is not transmitted by the Secretary to the Governors before November 30, as has occurred sometimes in the past.

Response: We did not incorporate this suggestion from a water district into this rule. It is possible that the processes for the Secretary to send the AOP to the Governors and the Colorado River entitlement holders to complete their annual water orders may not be completed until late in the year, beyond November 30. However, we agree with several respondents that the date when the authorized entity is to provide notice is better incorporated into the Storage and Interstate Release Agreement.

Comment: Modify § 414.3(a) to clarify that a storing entity, after receiving a notice of a request for a specific quantity of ICUA, will take actions to ensure that the Storing State's consumptive use of Colorado River water will be decreased by a quantity sufficient to develop the requested quantity of ICUA to be released for use in the Consuming State.

Response: We agree with this suggestion from a State agency, a water authority, and a water district and have modified this rule to incorporate this change. The revised provision is now renumbered § 414.3(a)(8).

Comment: Modify § 414.3(a) to provide that the Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement will specify which types of actions may be taken in the Storing State to develop ICUA.

Response: We agree with this suggestion from a State agency, a water authority, and a water district and have modified this rule to incorporate this change. The modified rule also requires the storing entity to specify the means by which the development of the ICUA will be enforceable by the storing entity. The revised provision is now renumbered § 414.3(a)(9).

Comment: The rule should be modified to specify that an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will require the storing entity to certify that ICUA is developed that otherwise would not exist and to specify the quantity, the means, and the entity by which the unused apportionment will be developed.

Response: We agree with this suggestion by a State agency, a water authority, and a water district and have modified and renumbered this provision § 414.3(a)(10) to incorporate this change into this rule. We do not agree with the comment from a State agency that it is necessary to specify the procedure by which certification is provided to the Secretary. However, the Secretary and the authorized entities may specify the certification procedure in the Storage and Interstate Release Agreement if they so choose.

Comment: The rule should provide guidance as to how the development of ICUA will be verified.

Response: We agree with the suggestion from a State agency and a water authority that this rule should require a Storage and Interstate Release Agreement to specify a procedure for verification of the ICUA appropriate to the manner in which it is developed. This rule has been modified to incorporate this requirement into a new § 414.3(a)(11). In addition, a new § 414.3(a)(6) was included in this rule to require the Storage and Interstate Release Agreement to specify a procedure for verification of the quantity of water stored in the Storing State under a Storage and Interstate Release Agreement. Further, § 414.3(a)(10) specifies that the storing entity must certify to the Secretary that ICUA has been or will be developed that would not otherwise exist. The Secretary may use independent means to verify the existence of ICUA.

Comment: The Secretary should review the water orders and release the AOP before actions are taken to develop or release ICUA.

Response: We do not agree with this suggestion from a State agency. The respondent raised a concern that this rule might allow a storing entity to increase its water order to include the quantity of requested ICUA. The authorized entity could then decrease its order, pump ground water or release

surface water that it otherwise would have used anyway, claim credit for developing ICUA, and receive payment for actions it would not have taken. We do not believe it is necessary for the consuming entity to postpone its request for ICUA until after the annual water orders and the AOP are completed. We believe that information on water orders should be shared openly and up front in the interest of better regional cooperation. The open nature of these water schedules will help ensure that an initial water order is legitimate and that it is not intentionally increased in order that a Storing entity could get credit for ICUA without taking the actions necessary to develop that ICUA.

Comment: Modify § 414.3(a) to include a requirement for the storing entity to provide evidence that the stored water has not migrated out of the State, out of the United States, to a saline sink, or returned to the mainstream.

Response: We do not agree with the comment from a water district that this provision is necessary in this rule. We will require full environmental compliance on all Storage and Interstate Release Agreements and will consider the potential migration of ground water storage when evaluating the effects of storage on the environment and trust resources.

Comment: Modify § 414.3(a) to clarify that the parties to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") other than the United States will indemnify the United States from actions taken by parties to the agreement other than the United States, not for the broader actions of the United States.

Response: We agree that the United States is covered by the Federal Tort Claims Act and other laws and have revised this paragraph, now designated § 414.3(a)(16), to incorporate this comment by a water district and an irrigation district.

Comment: The Department should protect the water in Indian tribes' ground water basins by not allowing the storage or recovery of water from ground water basins that are hydraulically connected to the tribes' ground water basins.

Response: The Department acknowledges its obligation to protect tribal resources. Section 414.3(b) provides that the Secretary will consider potential effects on trust resources and entitlement holders, which include Indian tribes with rights to the use of Colorado River water, in considering, participating in, and administering a Storage and Interstate Release Agreement.

Comment: Modify the following elements of § 414.3(b), now renumbered § 414.3(c), to require the Secretary to notify the public of a request to approve an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"), provide a more definitive time for the Secretary to respond to the request, provide for execution of necessary contracts to authorize the diversion and use of Colorado River water, and provide an appeals process.

Response: We have modified the rule to provide in § 414.3(a) that the Secretary will be a party to a Storage and Interstate Release Agreement. We modified § 414.3(c) to specify that the Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) shall have the authority to negotiate, execute, and administer a Storage and Interstate Release Agreement on behalf of the Secretary. The rule does not provide for an appeal of the Regional Director's decision whether to execute a particular Storage and Interstate Release Agreement. The necessity of contracts to authorize the diversion of water under a Storage and Interstate Release Agreement, except for storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders, is addressed in § 414.3(e) of the rule. The rule allows for the storage of Colorado River water either through a direct contract with the Secretary or through a valid subcontract with an entitlement holder authorized by the Secretary to enter into such subcontracts. The Storage and Interstate Release Agreement to which the Secretary will be a party satisfies the Section 5 requirement for the release or diversion of ICUA to the consuming entity in the Consuming State.

Comment: Amend § 414.3 (c) to conform the wording to other changes made that delete use of the term "redemption of storage credits."

Response: We agree with the suggestions from several State agencies, a water authority, and a water district, and have modified this rule to more clearly describe the intent of the Storage and Interstate Release Agreements. The revised wording specifies that, after receiving a notice of a request for release of ICUA, the storing entity will certify to the Secretary that sufficient water has been stored for the Storing State to support the development of the requested quantity of ICUA. The revised paragraph is designated § 414.3(a)(10).

Comment: Amend § 414.3(d) to conform the wording to other changes that delete use of the term redemption of storage credits. Also, specify that ICUA is available only for use by the consuming entity.

Response: We agree with the suggestions from several State agencies, a water authority, and a water district and has modified this rule to more clearly describe the intent of the Storage and Interstate Release Agreements. The revised wording substitutes the term "intentionally created unused apportionment" ("ICUA") for the less definitive term "redemption of storage credits." In addition, the revised rule clarifies that ICUA will be released only for use by the consuming entity.

Comment: The rule should provide for a contractual commitment by the Secretary to release to a consuming entity ICUA that exists as a consequence of implementation of the Interstate Storage Agreement.

Response: We modified the rule in § 414.3(a) to provide that the Secretary will be a party to Storage and Interstate Release Agreements. Sections 414.3(a)(12) through 414.3(a)(15) provide, among other things, that the Secretary will commit in the Storage and Interstate Release Agreement to release ICUA but only if all necessary actions are taken under the rule, if all laws and executive orders have been complied with, and if the Secretary has first determined that ICUA has been developed or will be developed by a storing entity.

Comment: A Federal agency has commented as to whether actual storage of Colorado River water must take place in those instances where both storage and recovery take place in the same year.

Response: The rule does allow for the release and delivery of ICUA in the same year in which it is developed. Consistent with the laws of the storing state, if recovery and development occur in the same year, and section 414.3(f) (Anticipatory Release of ICUA) is invoked, the Secretary will not require actual storage of water subsequent to the release of ICUA.

Comments Concerning § 414.4—Reporting Requirements and Accounting Under Storage and Interstate Release Agreements

Comment: Amend § 414.4 to provide more flexibility in the reporting date and to clarify the intent that water stored under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will be recovered and used in the State in which water will be stored and it will be ICUA water rather than credits that the Secretary will release under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). The language should reference the Interstate Storage

Agreements (now termed "Storage and Interstate Release Agreements") that establish the basis for the accounting for the water to be released by the Secretary for use in the Consuming State.

Response: We agree with this suggestion from several State agencies, a water authority, and a water district, and have revised this rule to more clearly describe the intent of the Storage and Interstate Release Agreements. The reporting date was made more flexible by allowing the date to be agreed upon by the parties to the Storage and Interstate Release Agreement and specified in the Storage and Interstate Release Agreement. To be consistent with other changes made in this rule, this provision refers to the water stored under a Storage and Interstate Release Agreement as water that is available to the storing entity. The Secretary will account for water stored under a Storage and Interstate Release Agreement and available to support the development of ICUA. The Secretary will release ICUA for use by a consuming entity when the provisions of this rule and the Storage and Interstate Release Agreement have been satisfied.

Comment: It is not clear how the "cut to the aquifer" or losses from storage or transportation are determined or if they are arbitrary or based on actual data. It is not clear whether this detail is specific to a State's regulation or the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement").

Response: A storing entity will determine how much stored water must remain in an aquifer based on the Storing State's applicable law and/or the policy of the authorized entity. In Arizona, that decision is based on State law which requires that 5 percent of water placed in offstream storage remain in the ground to replenish the aquifer. The authorized entity will determine, consistent with applicable State law, how much stored water can be recovered when that authorized entity decreases its diversions and consumptive use of Colorado River water in the future to develop ICUA that the Secretary will release for use by a consuming entity.

Comments Concerning § 414.5—Water Quality

Comment: Modify § 414.5(a) to clarify that the interstate agreements referred to are Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements"). Clarify which water is being referred to and recognize the Secretary's responsibilities under the Colorado River Basin Salinity Control Act.

Response: We agree with these suggestions from several State agencies, a water authority, and a water district, and have modified § 414.5(a). This rule clarifies that the referenced agreements are Storage and Interstate Release Agreements. In addition, the last sentence of § 414.5(a) was modified to qualify that the United States has no obligation to construct or furnish water treatment facilities to maintain or improve water quality except as otherwise provided in relevant Federal law. Implementation of this rule will not modify the Secretary's responsibilities under the Colorado River Basin Salinity Control Act of June 24, 1974 (88 Stat. 266).

Comments Concerning § 414.6—Environmental Compliance and Funding of Federal Costs

Comment: Modify § 414.6(b) to clarify that the interstate agreements referred to are Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements") and that the costs incurred by the United States in evaluating, processing, and approving an Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement") will be funded by the parties to that agreement.

Response: We agree with these suggestions from several State agencies, a water authority, and a water district, and have modified § 414.6(b) to require that the authorized entities that are parties to a Storage and Interstate Release Agreement must fund the United States costs of considering, participating in, and administering that agreement.

Public Comments on DPEA and Responses

The following is a discussion of the comments received on the DPEA and our responses. This section includes comments on the scope of the DPEA, Secretarial discretion, adequacy of the environmental assessment, potential effects on plants and wildlife, water available for instream flows and habitat enhancement, concerns over deliveries to Mexico, efficiency improvements, storage alternatives, consultations, sunset clause, economic impacts of the rule, effects on ground water storage, and general comments.

Scope of the DPEA

Comment: The description of proposed interstate transactions in the draft programmatic environmental assessment is overly broad and the draft environmental assessment is therefore unnecessarily broad in its scope.

Response: We recognize, from comments on the proposed rule and DPEA, that prospective transactions are not described the way prospective authorized entities will intend them to work. Colorado River water stored offstream under a Storage and Interstate Release Agreement will be available for use in the Storing State. When a consuming entity requests water stored under a Storage and Interstate Release Agreement, it will receive ICUA, not storage credits. The storing entity will take actions to reduce its State's consumptive use of Colorado River water, thereby developing ICUA. When the Secretary is satisfied that ICUA has been or will be developed, an equivalent quantity of ICUA will be released by the Secretary for use by the consuming entity. Based on a reformulation of the prospective transactions that may take place under the rule, we believe that the final programmatic environmental assessment (FPEA) is appropriate.

Secretarial Discretion

Comment: Several respondents commented that the rule should not be finalized or surplus water stored offstream before the Department clarifies exactly what discretion the Secretary has in providing water for habitat enhancement and how the proposed rule would affect that discretion.

Response: In the Lower Colorado River area (LCR), the Decree apportions surplus among the Lower Division States as follows: 50 percent to California, 46 percent tc Arizona, and 4 percent to Nevada. Entities with surplus contracts are currently using surplus and may store it offstream for intrastate use without the proposed Rule. We recognize that the Secretary's management of the LCR to accommodate endangered and sensitive species and their critical habitat is being reviewed as part of the MSCP. FWS developed a Reasonable and Prudent Alternative (RPA) in the Biological and Conference Opinion (BCO) for the current and projected routine operations and maintenance of the LCR. The RPA contains a number of provisions, one of which, 13(a), addresses the type and extent of the Secretary's discretionary action flexibility for all operations and maintenance activities on the Colorado River. Reclamation has provided a summary of its discretion to FWS. Reclamation complied with RPA provision 13(b) by providing a report to FWS on December 30, 1998, that identifies opportunities to increase the Secretary's discretion in Colorado River operations in order to provide water for fish and wildlife purposes. We believe

that this rule can be implemented without compromising the MSCP process.

Adequacy of the Environmental Assessment

Comment: The level of environmental compliance proposed by Reclamation is inadequate and Reclamation should complete a programmatic EIS on the proposed rule and the entire operation of the Colorado River.

Response: Please refer to the previous discussion of adequacy of the environmental assessment under the Environmental Concerns section of the Public Comments on Proposed Rule and Responses on General Issues.

Potential Effects on Plants and Wildlife

Comment: Compliance with the ESA for the proposed rule was not accomplished through the biological opinions for Central Arizona Project (CAP) or Lower Colorado River Operations and Maintenance Activity and Reclamation cannot defer them until a later date.

Response: We do not agree with this view expressed by several environmental groups. Reclamation has prepared a biological assessment (BA) for the proposed rule and entered into informal consultation with FWS. Please refer to the response to the following comment for more details about those consultations. Reclamation has incorporated by reference into its BA for the proposed rule the 1996 Biological Assessment for Description and Assessment of Operations, Maintenance, and Sensitive Species of the Lower Colorado River (LCRBA). The LCRBA analyzed the potential effects to listed species and designated critical habitat from current and projected routine LCR operations and maintenance where Reclamation has discretionary involvement or control. Reclamation also incorporated by reference FWS's 1997 BCO based on the LCRBA. These documents provide the baseline for current and projected routine LCR operations. More information on the BA prepared for this rule is contained in the next few responses.

The BCO and prior consultations with FWS for physical facilities and water delivery contracts with the Central Arizona Water Conservation District and Southern Nevada Water Authority cover the effects of both mainstream and offstream areas that would be involved in the scope of proposed actions under the rule.

Comment: The offstream storage and retrieval of water under the proposed rule is likely to have adverse direct, indirect, and cumulative effects on wildlife and critical habitat, particularly for threatened and endangered species.

Response: We do not agree with the view by several environmental groups that proposed actions under the proposed rule will adversely affect threatened and endangered species and critical habitat. Reclamation has met with FWS and engaged in informal consultations under the ESA. In the course of those consultations, Reclamation prepared a BA that analyzed the potential effects of operations under the proposed rule on listed species and designated habitat in the LCR action area. This analysis was based upon the most likely storage and retrieval scenarios of water from Lakes Mead or Havasu and associated river reaches to obtain ICUA under the proposed rule. At the request of FWS, several worst case scenarios were formulated by Reclamation for purposes of comparison with Colorado River operations that are most likely to occur under the proposed rule. These worst case scenarios were given detailed analysis and discussed with FWS but were later eliminated because they are not realistic and will not be allowed under proposed Storage and Interstate Release Agreements.

The BA analyzed several scenarios, one of which was a proposed action in which 1.2 maf would be stored in Arizona under a Storage and Interstate Release Agreement to allow an authorized entity in Nevada to meet its future water needs. Maximum conveyance capacity expected to be made available on the CAP to store water for interstate water transactions is 200 kaf/year. An authorized entity in Nevada will make future diversions of water from Lake Mead, in addition to Nevada's normal basic and surplus apportionments, to use ICUA released by the Secretary. This additional diversion of ICUA will be limited, under Arizona law, to a maximum of 100 kaf in any year. The BA analyzed the effects of this and other scenarios for storage of Colorado River water and future release of ICUA on listed species and their designated habitat. Effects to each species were determined for the most likely and low probability case scenarios. Habitat requirements for breeding, nesting, and foraging of some species are not dependent on the LCR. Fluctuations in water surface elevations associated with most likely and low probability storage and retrieval scenarios on reservoirs and riverine reaches on the LCR are very small and are not likely to adversely affect bonytail chub, razorback sucker, Yuma clapper rail, or southwestern willow flycatcher. Based upon the available information regarding the critical habitats for the razorback sucker and bonytail chub, storage and release of ICUA under this rule will not adversely modify critical habitat for these fish species. Other listed and sensitive species will not be affected by implementation of the rule. Reclamation did not consult with FWS on species in Mexico because the United States has no authority or discretion regarding Mexico's use of its treaty water or flood control releases.

Reclamation has notified the National Marine Fisheries Service that a section 7 consultation for Mexican species under its administration is not required.

Water Available for Instream Flows and Habitat Enhancement

Comment: Concern was expressed that Colorado River stream flows downstream from Lake Mead would first increase when water is put into storage in Arizona and then decrease in the future as more water is diverted from Lake Mead when Nevada recovers stored water.

Response: No significant changes are expected in stream flows downstream from Lake Mead as a result of implementation of a Storage and Interstate Release Agreement between Arizona and Nevada under the rule. The Biological Assessment for this rule evaluated the effects of storage of 100 and 200 kaf/year of Colorado River water in Arizona and subsequent diversion in a later year of up to 100 kaf by Nevada from Lake Mead. Very small changes in water surface elevations would occur in the riverine and reservoir areas below Lake Mead. The largest increase or decrease in average monthly water surface elevation when storing or using water was 0.12 feet. These changes fall within the range of increases and decreases in water surface elevations below Lake Mead and Hoover Dam under current river operations.

Concerns over Deliveries to Mexico

Comment: The DPEA states that a minor reduction will occur in the quantity of surplus water available for delivery to Mexico over the long term without explaining what a minor reduction is or what studies have been done to quantify this.

Response: Please refer to the previous discussion of adequacy of the environmental assessment under the Environmental Concerns section of the Public Comments on Proposed Rule and Responses on General Issues.

Comment: Offstream storage of surplus water will decrease the likelihood that water from flood control releases will reach the Gulf of

California, thereby reducing the quantity of water that otherwise would be available for environmental restoration in the delta.

Response: Flood control releases are projected to average 788 kaf/year during the period 1999–2015. Offstream storage could decrease flood control releases reaching Mexico by an average of 23 kaf/year during this time. The probability of occurrence of flood control releases could decrease by 0.83 percent. These decreases fall within the range of flood control projections previously consulted on in the 1996 Biological Assessment of Operations, Maintenance, and Sensitive Species of the Lower Colorado River.

Please refer to the previous discussion of adequacy of the environmental assessment under the Environmental Concerns section of the Public Comments on Proposed Rule and Responses to General Issues.

Efficiency Improvements

Comment: Efficiency improvements in river management and the storage of Colorado River water in underground aquifers mean less water is available for environmental purposes, such as the riparian and aquatic ecosystems of the river, including the river and delta region in Mexico.

Response: Please refer to the previous discussion of efficiency improvements under Public Comments on Proposed Rule and Responses on General Issues.

Storage Alternatives

Comment: It is not clear what storage options are available under the rule, or how the rule would apply if there are changes in Arizona's laws or if California or Nevada enact conflicting laws.

Response: We have modified this rule in response to comments from several State agencies, a water district, and a water authority. This rule now provides in § 414.3(a)(2) and § 414.6(a)(3), respectively, for the storage of basic or surplus apportionment of the Storing State, not otherwise put to use by entitlement holders within the Storing State, or storage of the unused basic or surplus apportionment of the Consuming State. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the rule provides that the Secretary will make that water available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement and will not make that water available to other entitlement holders. The rule has been drafted to apply uniformly to all three Lower Division States and the Department will not speculate about potential changes in Arizona's laws or whether California or Nevada may enact conflicting laws.

Comment: Banking in Lake Mead is illegal and it should not be listed as an alternative to the rule.

Response: We do not agree with the comment from a State agency that banking in Lake Mead is illegal. Moreover, under NEPA, Reclamation is charged with the responsibility to analyze reasonable alternatives, and the Department believes that it has appropriately complied with NEPA in this regard.

Comment: The DPEA misstates Arizona law with regard to the ability to create ICUA during a shortage year.

Response: We agree with the comment from a State agency that the statement in the DPEA that "Interstate recovery of storage credits in Arizona for California and Nevada will not be allowed in a shortage year" is not accurate. The FPEA has been revised to clarify that AWBA has discretion to decide whether it is in Arizona's best interests to enter into a Storage and Interstate Release Agreement that would require decreased diversions of mainstream water by Arizona during years when the Secretary has declared a shortage on the Colorado River.

Consultations

Comment: The requirement for consultation under the Fish and Wildlife Coordination Act is broader than described and consultation is required with the State wildlife agencies on an equal footing with FWS.

Response: We do not agree with this comment from a State agency that Reclamation is required to consult with State wildlife agencies. Reclamation's responsibility under the Fish and Wildlife Coordination Act is to coordinate with FWS who in turn is expected to interface and represent fish and wildlife concerns based on, among other things, coordination with State game and fish agencies. In addition, the Fish and Wildlife Coordination Act requirements will be met through both ESA and NEPA consultations. The Fish and Wildlife Coordination Act requires Reclamation to consider fish and wildlife resource needs in operation and management of water projects.

Sunset Clause

Comment: The need for a permanent rule was questioned and it was suggested that the rule should have a termination date, such as the end of the time that storage is anticipated. It was suggested that a sunset date will allow the Department an opportunity to do a programmatic reevaluation of how the rule is being used.

Response: We do not agree with the suggestion from a Federal agency that there should be a sunset date. Under this rule, a consuming entity will be able to enter into Storage and Interstate Release Agreements and pay for storage of water that the Storing State will use in the future when the consuming entity calls for ICUA. However, there is no way to accurately predict the future and unanticipated changes in the rate of population growth or the occurrence of droughts or surplus conditions will affect how much water can be stored or when ICUA will be needed. The parties to a Storage and Interstate Release Agreement would not agree to subject any water already in storage to new terms and conditions under new rules. A consuming entity that invests significant sums of money into funding water storage in a Storing State is not likely to agree to subject itself to limited term storage or revised terms and conditions for the right to receive ICUA under an already signed Storage and Interstate Release Agreement. The storage and retrieval period between Arizona and Nevada is projected to run from years 1999 to 2030 and may run longer if both California and Nevada enter into Storage and Interstate Release Agreements with Arizona. Under Arizona law no more than a total of 100 kaf of water stored in Arizona may be retrieved by California and Nevada in any given year. If Nevada is limited to retrieving a maximum of 50 kaf of ICUA from Arizona because California is also retrieving ICUA, the water stored under a Storage and Interstate Release Agreement could be retrieved at this rate beyond the year 2030.

Economic Impacts of the Rule

Comment: Some respondents commented that the proposed rule may impact the southern California water rates if less water that is apportioned to but unused by Arizona and Nevada is made available to California.

Response: Please refer to the previous discussion of potential economic impacts of the rule on southern California water rates that is included in the discussion of economic impacts of this rule under Public Comments on Proposed Rule and Responses on General Issues.

Comment: The DPEA provides little information regarding potential environmental justice concerns regarding minority and low-income communities, such as Indian tribes, communities along the Mexican border, and communities near the Gulf of California.

Response: We have reevaluated the section of the DPEA on environmental justice and has included additional analysis. Based on this additional analysis, we do not find that this rule will have an effect on minority or low-income communities. As discussed in previous responses, this rule is not intended as a mechanism to compensate tribes.

Because Mexico is a sovereign nation, we have no control over how Colorado River water is used once it reaches the international border. Thus while we have determined that there may be minimal effects of this rule on flood control deliveries to the international border, we cannot determine the potential effects that any potential reduction in the deliveries of flood control water may have within the Republic of Mexico.

Effects on Ground Water Storage

Comment: Some respondents, including Indian tribes, commented that the rule would result in a net loss in ground water over time to "indirect storage" and that this is a significant indirect effect of the rule but the DPEA shows no analysis of this effect.

Response: We do not agree that actions under this rule will result in a loss of ground water to indirect storage. The method by which Colorado River water is stored by indirect storage allows water to remain in the ground in lieu of being pumped. When Arizona is the Storing State, the development of ICUA is limited to only 95 percent of the water previously stored under a Storage and Interstate Release Agreement. Therefore, the ground water will gain by 5 percent of the water that would have been pumped anyway if it were left in the ground through in lieu storage actions. Further, although Arizona law currently does not allow the development of ICUA by any means other than pumping water that was stored under a Storage and Interstate Release Agreement, this rule allows additional flexibility. If Arizona changes its laws or policy in the future to allow other means of developing ICUA, it is possible that the alternative means could help preserve Arizona's ground water. Finally, as stated previously, this rule allows Colorado River entitlement holders in the Storing State the option to use the water previously stored under a Storage and Interstate Release Agreement or other means consistent with Storing State law to develop ICUA.

Comment: Reclamation should clarify how the rule fits within the regulatory framework for ground water protection in each State, as well as the federal role in ground water protection. The preamble to the proposed rule contains a statement that, "Water quality will be monitored by the Environmental Protection Agency . . ." It is not clear to what extent Reclamation expects the Environmental Protection Agency (EPA) to be involved in offstream storage authorized under the rule.

Response: We do not anticipate a need for EPA to evaluate data collected through any offstream storage of Colorado River water. The purpose of the statement was to declare that the Department, and more specifically Reclamation, does not have the responsibility to regulate ground water quality.

General Comments

Comment: There were a number of editorial comments on the DPEA that suggested clarification or additional explanation on various points.

Response: We have reviewed and considered the comments and has adopted many of the suggestions into the text of the FPEA. In addition, the previously mentioned informal consultations between Reclamation and FWS resulted in Reclamation's incorporation of numerous suggestions made by FWS into the BA and FPEA.

Public Comments on Definition of Authorized Entity and Several Other Technical Matters and Responses

As a result of receiving differing comments on the definition of authorized entity and several other technical matters, the Department reopened the comment period on September 21, 1998 (63 FR 50183) for a 30-day period ending October 21, 1998. We asked interested parties to provide comments on three specific questions:

Question 1: Should the definition of "authorized entity" be revised to clarify that an authorized entity, including a water bank, must hold an entitlement to Colorado River water in order to ensure consistency with the Law of the River, including specifically Section 5 of the BCPA as interpreted by the Decree?

Question 2: Should an approved Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement) and a contract under Section 5 of the BCPA be combined into one document, thus making the parties entitlement holders upon execution of the agreement?

Question 3: If not combined, should the Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement) and any separate Section 5 contract (or amendments to an existing contract) be processed and approved simultaneously to eliminate duplication of any administrative and compliance procedures?

The Department received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all pertinent comments and revised the rule based on these comments. Four respondents, including one water users association and three environmental organizations, did not address the issues on which comments were solicited during the reopened comment period. One water users association resubmitted its comments from the original comment period. Three environmental organizations reiterated the same environmental concerns addressed in their respective responses in the original comment period. Two respondents jointly submitted a report that addresses potential effects of water flows from the United States on the riparian and marine ecosystems of the Colorado River delta in Mexico.

The remaining seven respondents provided comments on issues pertinent to the reopened comment period, although one State agency and one water district also resubmitted their respective comments from the original comment period.

The following is a discussion of the comments received on the issues pertinent to the reopened comment period and our responses.

Comments on Question 1

Comment: One State agency and two water districts cite the BCPA and the Decree to support their view that an authorized entity must have a contract with the Secretary. Two State agencies, one water district, and one water authority commented that an authorized entity need not be an entitlement holder to store water and make it available to a Consuming State under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). The latter group recognizes that the BCPA and the Decree require all diversions of Colorado River water from the mainstream to be based on an entitlement. However, these respondents believe there is no statutory requirement for the authorized entity to have a direct contract with the Secretary in order to fulfill its responsibilities to store its own State's unused apportionment. Under their reasoning, the authorized entity can arrange for storage and ensure the availability of unused apportionment in the future

through existing contractual arrangements with other parties that have entitlements through contracts with the Secretary.

Response: With the exception of Federal and tribal rights identified in Article II(D) of the Decree, all diversions of water from the Colorado River for use within the Lower Division States require a contract with the Secretary. This is specified in Section 5 of the BCPA and confirmed by the Decree in *Arizona* v. *California*. Under this rule diversions of Colorado River water will occur in two circumstances. The first is when water is taken from the river and stored off-stream by the storing entity and the second is when ICUA has been developed and that water is released by the Secretary for use by the consuming entity.

For authorized entities that do not hold a Federal or tribal entitlement recognized in Article II(D) of the Decree, the rule allows for the storage of Colorado River water either through a direct contract with the Secretary or through a valid subcontract with an entitlement holder. For the release or diversion of ICUA to the consuming entity, the Storage and Interstate Release Agreement, to which the Secretary will be a party, satisfies the Section 5 requirement.

Comments on Question 2

Comment: One State agency and one water district believe that sufficient statutory and contractual authorities exist to allow the authorized entity to take water for banking purposes that otherwise would be unused in that State. These parties believe the authorized entity does not need to hold its own entitlement because sufficient legal authority already exists under applicable laws and contracts. The State agency states that not all end users of Colorado River water are required to have entitlements or contracts with the Secretary. The State agency further contends that the Colorado River Basin Project Act [43 U.S.C. 1524(b)] makes a direct contract between the Secretary and end-users of Colorado River water in Arizona discretionary.

Response: The Department recognizes in new § 414.3(e) that storage of Article II(D) water by Federal or tribal entitlement holders or existing contracts may allow for the delivery of water under this rule. These include direct contracts between authorized entities and the Secretary. These also include subcontracts between authorized entities and an entitlement holder that has been authorized by the Secretary to enter into subcontracts for the delivery of Colorado River water. Authorized entities that are Federal or tribal entitlement holders identified in Article II(D) of the Decree are not subject to the Section 5 contract requirement in the Decree. Section 414.3(e) also provides that the Storage and Interstate Release Agreement, to which the Secretary is a party, can be a water delivery contract. We agree that when existing contracts or valid subcontracts provide for delivery of Colorado River water under this rule, there is no need to combine these contracts with the Storage and Interstate Release Agreement.

Comment: Another State agency and one water authority, in a joint response, believe an additional contract, beyond the contract necessary to fulfill the requirements of Section 5 of the BCPA, is necessary with the Secretary for the release of water based on the development of ICUA by a storing entity. However, those parties do not see a need for new and additional Section 5 contracts beyond those that now exist.

Response: The Department modified the rule in § 414.3(a) to provide that the Secretary will be a party to Storage and Interstate Release Agreements. Sections 414.3(a)(12) through 414.3(a)(15) provide, among other things, that the Secretary will commit in the Storage and Interstate Release Agreement to release ICUA but only if all necessary actions are taken under the rule, if all laws and executive orders have been complied with, and if the Secretary has first determined that ICUA has been developed or will be developed by a storing entity.

Comment: One State agency and two water districts commented that whether or not the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") and Section 5 contract are combined is discretionary and that this should be determined by the particular situation.

Response: We have modified § 414.3(a) to provide that the Secretary will be a party to the Storage and Interstate Release Agreement. The Storage and Interstate Release Agreement can serve as a water delivery contract within the meaning of Section 5 of the BCPA. We recognize in § 414.3(e) that, in certain circumstances, existing contracts or subcontracts can satisfy the requirements of Section 5 for the delivery of water under a Storage and Interstate Release Agreement. In such circumstances, the rule does not anticipate the need for the execution of any further Section 5 contracts in order to implement a Storage and Interstate Release Agreement. Storage of water by authorized entities that hold Article II(D) of the Decree entitlements will not be subject to a Section 5 contract requirement.

Comment: One water district suggested that while there is no legal requirement for the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") and Section 5 contract to be combined, it was suggested that such an action would have the effect of making the Secretary a party to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). It was asserted that making the Secretary party to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") may give the authorized entities a greater sense of security that future obligations will be performed.

Response: The Department recognizes in new § 414.3(e) that existing contracts may allow for the delivery of water under this rule. These include direct contracts between authorized entities and the Secretary. These also include subcontracts between authorized entities and an entitlement holder that has been authorized by the Secretary to enter into subcontracts for the delivery of Colorado River water. Section 414.3(e) also provides that the Storage and Interstate Release Agreement, to which the Secretary is a party, can serve as a water delivery contract. We agree that when existing contracts or valid subcontracts provide for delivery of Colorado River water under this rule, there is no need to combine these contracts with the Storage and Interstate Release Agreement.

Comment: Another water district stated that if one of the parties to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") already holds an entitlement for delivery of Colorado River water under a BCPA Section 5 contract, a new or amended water delivery contract may not be necessary.

Response: The Department recognizes in the new § 414.3(e) that in certain circumstances existing contracts may satisfy the Section 5 requirement of the BCPA so that additional Section 5 authority would be unnecessary to perform activities under a Storage and Interstate Release Agreement. Section 5 authority is also unnecessary for the storage of Article II(D) of the Decree water by Federal or tribal entitlement holders. In circumstances where additional Section 5 authority is unnecessary, the Storage and Interstate Release Agreement would only cover the specific details of a transaction between the Secretary and the other parties to the Storage and Interstate Release Agreement.

Comments on Question 3

Comment: One State agency and one water district stated that sufficient statutory and contractual authorities already exist under applicable laws and contracts to allow the authorized entity to take water for banking purposes. Therefore there would be no need for a new or amended contract. Another State agency and one water authority believe that an additional contract is necessary with the Secretary to ensure the Secretary's commitment to release water based on the development of ICUA by a storing entity. That contract could be executed concurrently with an Interstate Storage Agreement. However, as noted under comments on Question 2, those parties do not see a need for new and additional Section 5 contracts beyond those that now exist. One State agency responded that if there are two separate agreements, they should be processed, reviewed, and approved simultaneously. The two water districts commented that any necessary Section 5 contract, whether or not combined with an Interstate Storage Agreement, should be processed and approved simultaneously with the Interstate Storage Agreement.

Response: Question 3 asked whether Storage and Interstate Release Agreements and Section 5 contracts, if not combined, should be processed simultaneously. We have modified the rule in § 414.3(a) to provide that the Secretary will be a party to a Storage and Interstate Release Agreement. The Department also recognizes in § 414.3(e) that, in certain circumstances, existing contracts or subcontracts satisfy the requirements of Section 5 for the delivery of water under a Storage and Interstate Release Agreement. The rule does not anticipate the need for the execution of any further Section 5 contracts in order to implement a Storage and Interstate Release Agreement. Question 3 is moot in light of these modifications to the rule. Comments by the parties in response to Question 3 primarily address issues raised by Questions 1 and 2 and are responded to above.

V. Procedural Matters

- Environmental Compliance
- Paperwork Reduction Act
- Regulatory Flexibility Act
- Small Business Regulatory Enforcement Fairness Act (SBREFA)
- Unfunded Mandates Reform Act of 1995
- Executive Order 12612, Federalism Assessment
- Executive Order 12630, Takings Implications Analysis
- Executive Order 12866, Regulatory Planning and Review
- Executive Order 12988, Civil Justice Reform

Environmental Compliance

We prepared a DPEA and placed it on file in the Reclamation Administrative Record. We received comments on the DPEA (discussed above in III. Responses to Comments), and carefully considered those comments in preparing the final programmatic environmental assessment (FPEA). We have accepted many of these comments and incorporated them into the FPEA, which is on file in the Reclamation Administrative Record. Based on the FPEA, we have determined that a Finding of No Significant Impact is warranted.

We have also, under the ESA, consulted with FWS on potential impacts of this rule on listed species and designated habitat. Based on the analysis contained in the BA that we prepared for the rule, we have determined that operations under this rule are not likely to adversely affect listed species or designated habitat in the action area. FWS has concurred with this finding. We have also determined that we have no Section 7 obligations for species within Mexico due to our inability to control the use of water once it reaches Mexico.

Compliance with NEPA, the ESA, and other relevant statutes, laws, and executive orders will be completed for future Federal actions taken under this rule to ensure that any action authorized or carried out by the Secretary does not jeopardize the continued existence of any threatened or endangered species, does not adversely modify or destroy critical habitat, and is analyzed by an appropriate environmental document. Consultation and coordination between Reclamation, FWS, other agencies, and interested parties will be completed on a case-by-case basis.

Paperwork Reduction Act

This rule is geographically limited to the States of Arizona, California, and Nevada. The collection of information contained in the rule covers storing entities that would store Colorado River water off the mainstream of the Colorado River. The information we would collect would be compiled by these storing entities in the course of their normal business, and the annual reports to the Secretary will not impose any significant time or cost burden. We will submit the information collection requirements in this rule to the Office of Management and Budget for approval as required by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We will not require collection of this information until the Office of Management and Budget has given its approval.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any direct cost on small entities. Financial costs associated with the development and release of intentionally created unused apportionment will be borne by the parties who voluntarily enter into offstream storage and release agreements. A benefit-cost analysis was completed and concludes that this rule does not impose significant or unique impact upon small governments (including Indian communities), small entities such as water purveyors, water districts, or associations, or individual entitlement holders. From a financial perspective, since the rule may provide an opportunity for authorized entities in the Lower Division States to secure additional supplies of Colorado River water, Colorado River water users may experience a cost savings. The rule will not affect any Colorado River entitlement holder's right to use its full water entitlement. Further, in times of shortage on the Colorado River, numerous small water users with senior water rights, which are determined by an earlier priority date, will retain their seniority and will be served before less senior users regardless of size.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(1) Does not have an annual effect on the economy of $100 million or more. The Department prepared a benefit-cost analysis, which estimated that this rule would cause net economic benefits on a State and regional level using different water supply models and discount rates. Under a conservative water supply scenario characterized by 19 years of normal conditions on the Colorado River and one surplus year, discounted net economic benefits at the regional level ranged from $12.8 to $61.2 million at 5.75 per cent and $9.5 to $47.7 million at 8.27 per cent. Under a water supply scenario characterized by 10 years of surplus conditions on the Colorado River, the net economic benefits range from $550,255 to $4.8 million at 5.75 per cent and $350,789 to $3.1 million at 8.27 per cent. Under the scenario characterized by 10 surplus

years, demand for banked water is relatively low because water users in the Lower Division States can meet most of their water needs with diversions from the mainstream within the basic and surplus apportionments for use within those States.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

This rule facilitates the creation of an additional alternative for water agencies to secure water supplies. However, entering into Storage and Interstate Release Agreements for the offstream storage of Colorado River water and the release of ICUA provided for in this rule is voluntary. Should the costs of the procedures to facilitate these transactions, provided for in the rule, be greater than the cost of other alternative water supplies, the States would probably select the cheaper alternatives.

This rule may create an opportunity for the total cost of alternative water supplies to decrease, thereby reducing the cost burden on all water users in southern California.

Water users in southern Nevada are just now approaching use of the entire 300 kaf basic annual apportionment of Colorado River for use in Nevada. Like California, Nevada will also need alternative water supplies to satisfy the increasing demands of economic development and population growth. The cost of securing alternative supplies will be greater than the cost of obtaining Colorado River water under the State's basic or surplus apportionment. This rule may provide an opportunity for Colorado River water users in Nevada to experience a cost savings in securing additional supplies of Colorado River water.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule is facilitating voluntary water transactions that may confer benefits on a national basis in many economic sectors.

(i) Voluntary water transactions can promote economic efficiency gains. These gains accrue to the parties in a given transaction and to the wider regional and national economy. The gains result due to greater flexibility in how and where water is used.

(ii) Voluntary water transactions offer a cost effective way to increase water supplies without constructing new mainstream facilities such as dams.

(iii) Voluntary water transactions may stimulate investment and development in conservation technology that is currently economically infeasible given the returns to water in its present use.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The range of benefits and costs associated with the rule are constrained because the amount of water that can be released under an offstream storage agreement in any one year is constrained by State law and immediate demand. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The rule provides a framework under which authorized entities could voluntarily store Colorado River water offstream for future interstate use. The publication of this rule does not authorize specific activities, and will not impose costs on any State, local, or tribal government, or the private sector. A statement (benefit-cost analysis) containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) has been prepared and is summarized below in the section relating to Executive Order 12866.

We received comments on the benefit-cost analysis that were editorial in nature or asked for clarification or revision of information in the analysis. We accepted approximately 85 percent of the comments and revised the text or footnotes as necessary to include those changes where requested.

The benefit-cost analysis concluded that this rule does not impose significant or unique impact upon small governments (including Indian communities), small entities such as water districts, or individual entitlement holders. The rule will not affect the priority of water use on the Colorado River. Therefore benefits received by water users, regardless of size, associated with the right to divert Colorado River water will remain. Costs of storage and release of unused apportionment water will be borne by authorized entities in the Storing State and the Consuming State who voluntarily enter into storage and release agreements. All Colorado River water users may experience a decrease in water costs since the rule will enable authorized entities in the Lower Division States to secure additional water supplies. The adoption of 43 CFR part 414 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612, Federalism Assessment

In accordance with Executive Order 12612, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required. This rule does not alter the relationship between the Federal Government and the States under the Decree nor does it alter the distribution of power and responsibilities among the various levels of government.

Executive Order 12630, Takings Implications Analysis

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule does not represent a government action capable of interfering with constitutionally protected property rights. This rule does not impose additional fiscal burdens on the public and would not result in physical invasion or occupancy of private property or substantially affect its value or use. This rule would not result in any Federal action that would place a restriction on a use of private property and does not affect a Colorado River water entitlement holder's right to use its full water entitlement. Under this rule, an authorized entity may store unused Colorado River water available from an entitlement holder's water rights only if the water right holder does not use or store that water on its own behalf. When the Storing State must reduce its diversions to develop ICUA, an entity that reduces its consumptive use of Colorado River water to develop that unused apportionment will do so voluntarily under an appropriate agreement. Therefore, the Department of the Interior has determined that this rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866, Regulatory Planning and Review

This rule is a significant regulatory action under section 3(f)(4) of Executive Order 12866 because it raises novel legal or policy issues. Executive Order 12866 requires an assessment of potential costs and benefits under section 6(a)(3). The Department's benefit-cost analysis determines that this rule does not impose significant or unique impacts upon small governments (including Indian communities), small entities such as water purveyors or associations, or even individual water entitlement holders.

California and Nevada are looking for alternative water supplies to satisfy the increasing demands of economic development and population growth. This rule may provide an opportunity for Colorado River water users in Nevada to experience a marginal cost savings in securing alternative supplies. Offstream storage of Colorado River water and making available ICUA are voluntary actions. Should the costs of the procedures in this rule to facilitate these transactions be greater than the costs of other alternative water supplies, California and Nevada would probably select the lower cost alternatives.

The benefit-cost analysis estimated net economic benefits of this rule on a State and regional level using different water supply models and discount rates. The different water supply models represent potential water supply conditions on the Colorado River that affect interstate demand for water from an Arizona water bank and the magnitude of economic benefits obtained from that water. The discount rates used in the analysis were 5.75 per cent (the average rate on municipal bonds in 1996, which is a rate faced by major water purveyors in California and Nevada) and 8.27 per cent (the prime rate in 1996, which more accurately represents the cost of money).

Under a conservative water supply scenario characterized by 19 years of normal conditions on the Colorado River and one surplus year, discounted net economic benefits at the regional level ranged from $12.8 to $61.2 million at 5.75 per cent and $9.5 to $47.7 million at 8.27 per cent. Under a water supply scenario characterized by 10 years of surplus conditions on the Colorado River, the net economic benefits range from $550,255 to $4.8 million at 5.75 per cent and $350,789 to $3.1 million at 8.27 per cent. Under the scenario characterized by 10 surplus years, demand for banked water is relatively low because water users in the Lower Division States can meet most of their water needs with diversions from the mainstream within the basic and surplus apportionments for use within those States.

We have placed the full analysis on file in the Reclamation Administrative Record at Bureau of Reclamation, Administrative Record, Lower Colorado Regional Office, P.O. Box 61470, Boulder City, NV 89006–1470, Attention: BC00–4451.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

List of Subjects in 43 CFR Part 414

Environmental compliance, Public lands, Water bank program, Water resources, Water storage, Water supply, and Water quality.

Dated: October 26, 1999.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

For the reasons stated in the preamble, the Bureau of Reclamation adds a new part 414 to title 43 of the Code of Federal Regulations as follows:

PART 414—OFFSTREAM STORAGE OF COLORADO RIVER WATER AND DEVELOPMENT AND RELEASE OF INTENTIONALLY CREATED UNUSED APPORTIONMENT IN THE LOWER DIVISION STATES

Sec.

Subpart A—Purposes and Definitions

414.1 Purpose.
414.2 Definitions of terms used in this part.

Subpart B—Storage and Interstate Release Agreements

414.3 Storage and Interstate Release Agreements.
414.4 Reporting Requirements and accounting under storage and interstate release agreements.

Subpart C—Water Quality and Environmental compliance

414.5 Water Quality.
414.6 Environmental Compliance and funding of Federal costs.

Authority: 5 U.S.C. 553; 43 U.S.C. 391, 485 and 617; 373 U.S. 546; 376 U.S. 340.

Subpart A—Purposes and Definitions

§ 414.1 Purpose.

(a) *What this part does.* This part establishes a procedural framework for the Secretary of the Interior (Secretary) to follow in considering, participating in, and administering Storage and Interstate Release Agreements in the Lower Division States (Arizona, California, and Nevada) that would:

(1) Permit State-authorized entities to store Colorado River water offstream;

(2) Permit State-authorized entities to develop intentionally created unused apportionment (ICUA);

(3) Permit State-authorized entities to make ICUA available to the Secretary for release for use in another Lower Division State. This release may only take place in accordance with the Secretary's obligations under Federal law and may occur in either the year of storage or in years subsequent to storage; and

(4) Allow only voluntary interstate water transactions. These water transactions can help to satisfy regional water demands by increasing the efficiency, flexibility, and certainty in Colorado River management in accordance with the Secretary's authority under Article II (B) (6) of the Decree entered March 9, 1964 (376 U.S. 340) in the case of *Arizona* v. *California,* (373 U.S. 546) (1963), as supplemented and amended.

(b) *What this part does not do.* This part does not:

(1) Affect any Colorado River water entitlement holder's right to use its full water entitlement;

(2) Address or preclude independent actions by the Secretary regarding Tribal storage and water transfer activities;

(3) Change or expand existing authorities under the body of law known as the "Law of the River";

(4) Change the apportionments made for use within individual States;

(5) Address intrastate storage or intrastate distribution of water;

(6) Preclude a Storing State from storing some of its unused apportionment in another Lower Division State if consistent with applicable State law; or

(7) Authorize any specific activities; the rule provides a framework only.

§ 414.2 Definitions of terms used in this part.

Authorized entity means:

(1) An entity in a Storing State which is expressly authorized pursuant to the laws of that State to enter into Storage and Interstate Release Agreements and develop ICUA ("storing entity"); or

(2) An entity in a Consuming State which has authority under the laws of that State to enter into Storage and Interstate Release Agreements and acquire the right to use ICUA ("consuming entity").

Basic apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary of the Interior, to satisfy 7.5 million acre-feet (maf) of annual consumptive use in the Lower Division States. The United States Supreme Court, in *Arizona* v. *California,* confirmed that the annual basic apportionment for the Lower Division States is 2.8 maf of consumptive use in the State of Arizona, 4.4 maf of consumptive use in the State of California, and 0.3 maf of consumptive use in the State of Nevada.

BCPA means the Boulder Canyon Project Act, authorized by the Act of Congress of December 21, 1928 (45 Stat. 1057).

Colorado River Basin means all of the drainage area of the Colorado River System and all other territory within the United States to which the waters of the Colorado River System shall be beneficially applied.

Colorado River System means that portion of the Colorado River and its tributaries within the United States.

Colorado River water means water in or withdrawn from the mainstream.

Consuming entity means an authorized entity in a Consuming State.

Consuming State means a Lower Division State where ICUA will be used.

Consumptive use means diversions from the Colorado River less any return flow to the river that is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation.

(1) Consumptive use from the mainstream within the Lower Division States includes water drawn from the mainstream by underground pumping.

(2) The Mexican treaty obligation is set forth in the February 3, 1944, Water Treaty between Mexico and the United States, including supplements and associated Minutes of the International Boundary and Water Commission.

Decree means the decree entered March 9, 1964, by the Supreme Court in *Arizona* v. *California,* 373 U.S. 546 (1963), as supplemented or amended.

Entitlement means an authorization to beneficially use Colorado River water pursuant to:

(1) The Decree;

(2) A water delivery contract with the United States through the Secretary; or

(3) A reservation of water from the Secretary.

Intentionally created unused apportionment or ICUA means unused apportionment that is developed:

(1) Consistent with the laws of the Storing State;

(2) Solely as a result of, and would not exist except for, implementing a Storage and Interstate Release Agreement.

Lower Division States means the States of Arizona, California, and Nevada.

Mainstream means the main channel of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs behind dams on the main channel, and Senator Wash Reservoir off the main channel.

Offstream storage means storage in a surface reservoir off of the mainstream or in a ground water aquifer. Offstream storage includes indirect recharge when Colorado River water is exchanged for ground water that otherwise would have been pumped and consumed.

Secretary means the Secretary of the Interior or an authorized representative.

Storage and Interstate Release Agreement means an agreement, consistent with this part, between the Secretary and authorized entities in two or more Lower Division States that addresses the details of:

(1) Offstream storage of Colorado River water by a storing entity for future use within the Storing State;

(2) Subsequent development of ICUA by the storing entity, consistent with the laws of the Storing State;

(3) A request by the storing entity to the Secretary to release ICUA to the consuming entity;

(4) Release of ICUA by the Secretary to the consuming entity; and

(5) The inclusion of other entities that are determined by the Secretary and the storing entity and the consuming entity to be appropriate to the performance and enforcement of the agreement.

Storing entity means an authorized entity in a Storing State.

Storing State means a Lower Division State in which water is stored off the mainstream in accordance with a Storage and Interstate Release Agreement for future use in that State.

Surplus apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary, to satisfy in excess of 7.5 maf of annual consumptive use in the Lower Division States.

Unused apportionment means Colorado River water within a Lower Division State's basic or surplus apportionment, or both, which is not otherwise put to beneficial consumptive use during that year within that State.

Upper Division States means the States of Colorado, New Mexico, Utah, and Wyoming.

Water delivery contract means a contract between the Secretary and an entity for the delivery of Colorado River water in accordance with section 5 of the BCPA.

Subpart B—Storage and Interstate Release Agreements

§ 414.3 Storage and Interstate Release Agreements.

(a) *Basic requirements for Storage and Interstate Release Agreements.* Two or more authorized entities may enter into Storage and Interstate Release Agreements with the Secretary in accordance with paragraph (c) of this section. Each agreement must meet all of the requirements of this section.

(1) The agreement must specify the quantity of Colorado River water to be stored, the Lower Division State in which it is to be stored, the entity(ies) that will store the water, and the facility(ies) in which it will be stored.

(2) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Storing State. For water from the Storing State's apportionment to qualify as unused apportionment available for storage under this part, the water must first be offered to all entitlement holders within the Storing State for purposes other than interstate transactions under proposed Storage and Interstate Release Agreements.

(3) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Consuming State. If the water to be stored will be unused apportionment of the Consuming State, the agreement must acknowledge that any unused apportionment of the Consuming State may be made available from the Consuming State by the Secretary to the Storing State only in accordance with Article II(B)(6) of the Decree. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the Secretary will make the unused apportionment of the Consuming State available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement and will not make that water available to other entitlement holders.

(4) The agreement must specify the maximum quantity of ICUA that will be developed and made available for release to the consuming entity.

(5) The agreement must specify that ICUA may not be requested by the consuming entity in a quantity that exceeds the quantity of water that had been stored under a Storage and Interstate Release Agreement in the Storing State.

(6) The agreement must specify a procedure to verify and account for the quantity of water stored in the Storing State under a Storage and Interstate Release Agreement.

(7) The agreement must specify that, by a date certain, the consuming entity will:

(i) Notify the storing entity to develop a specific quantity of ICUA in the following calendar year;

(ii) Ask the Secretary to release that ICUA; and

(iii) Provide a copy of the notice or request to each Lower Division State.

(8) The agreement must specify that when the storing entity receives a request to develop a specific quantity of ICUA:

(i) It will ensure that the Storing State's consumptive use of Colorado River water will be decreased by a quantity sufficient to develop the requested quantity of ICUA; and

(ii) Any actions that the storing entity takes will be consistent with its State's laws.

(9) The agreement must include a description of:

(i) The actions the authorized entity will take to develop ICUA;

(ii) Potential actions to decrease the authorized entity's consumptive use of Colorado River water;

(iii) The means by which the development of the ICUA will be enforceable by the storing entity; and

(iv) The notice given to entitlement holders, including Indian tribes, of opportunities to participate in development of this ICUA.

(10) The agreement must specify that the storing entity will certify to the Secretary that ICUA has been or will be developed that otherwise would not have existed. The certification must:

(i) Identify the quantity, the means, and the entity by which ICUA has been or will be developed; and

(ii) Ask the Secretary to make the ICUA available to the consuming entity under Article II(B)(6) of the Decree and the Storage and Interstate Release Agreement.

(11) The agreement must specify a procedure for verifying development of the ICUA appropriate to the manner in which it is developed.

(12) The agreement must specify that the Secretary will release ICUA developed by the storing entity:

(i) In accordance with a request of the consuming entity;

(ii) In accordance with the terms of the Storage and Interstate Release Agreement;

(iii) Only for use by the consuming entity and not for use by other entitlement holders; and

(iv) In accordance with the terms of the Storage and Interstate Release Agreement, the BCPA, Article II(B)(6) of the Decree and all other applicable laws and executive orders.

(13) The agreement must specify that ICUA shall be released to the consuming entity only in the year and to the extent that ICUA is developed by the storing entity by reducing Colorado River water use within the Storing State.

(14) The agreement must specify that the Secretary will release ICUA only after the Secretary has determined that all necessary actions have been taken under this part.

(15) The agreement must specify that before releasing ICUA the Secretary must first determine that the storing entity:

(i) Stored water in accordance with the Storage and Interstate Release Agreement in quantities sufficient to support the development of the ICUA requested by the consuming entity; and

(ii) Certified to the satisfaction of the Secretary that the quantity of ICUA requested by the consuming entity has been developed in that year or will be developed in that year under § 414.3(f).

(16) The agreement must specify that the non-Federal parties to the Storage and Interstate Release Agreement will indemnify the United States, its employees, agents, subcontractors, successors, or assigns from loss or claim for damages and from liability to persons or property, direct or indirect, and loss or claim of any nature whatsoever arising by reason of the actions taken by the non-federal parties to the Storage and Interstate Release Agreement under this part.

(17) The agreement must specify the extent to which facilities constructed or financed by the United States will be used to store, convey, or distribute water associated with a Storage and Interstate Release Agreement.

(18) The agreement must include any other provisions that the parties deem appropriate.

(b) *How to address financial considerations.* The Secretary will not execute an agreement that has adverse impacts on the financial interests of the United States. Financial details between and among the non-Federal parties need not be included in the Storage and Interstate Release Agreement but instead can be the subject of separate agreements. The Secretary need not be a party to the separate agreements.

(c) *How the Secretary will execute storage and interstate release agreements.* The Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) may execute and administer a Storage and Interstate Release Agreement on behalf of the Secretary. The Secretary will notify the public of his/her intent to participate in negotiations to develop a Storage and Interstate Release Agreement and provide a means for public input. In considering whether to execute a Storage and Interstate Release Agreement, the Secretary may request, and the non-Federal parties must provide, any additional supporting data necessary to clearly set forth both the details of the proposed transaction and the eligibility of the parties to participate as State-authorized entities in the proposed transaction. The Secretary will also consider: applicable law and executive orders; applicable contracts; potential effects on trust resources; potential effects on entitlement holders, including Indian tribes; potential impacts on the Upper Division States; potential effects on third parties; potential environmental impacts and potential effects on threatened and endangered species; comments from interested parties, particularly parties who may be affected by the proposed action; comments from the State agencies responsible for consulting with the Secretary on matters related to the Colorado River; and other relevant factors, including the direct or indirect consequences of the proposed Storage and Interstate Release Agreement on the financial interests of the United States. Based on the consideration of the factors in this section, the Secretary may execute or decide not to execute a Storage and Interstate Release Agreement.

(d) *Assigning interests to an authorized entity.* Non-Federal parties to a Storage and Interstate Release Agreement may assign their interests in the Agreement to authorized entities. The assignment can be in whole or in part. The assignment can only be made if all parties to the agreement approve.

(e) *Requirement for contracts under the Boulder Canyon Project Act.* Release or diversion of Colorado River water for storage under this part must be supported by a water delivery contract with the Secretary in accordance with Section 5 of the BCPA. The only exception to this requirement is storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders. The release or diversion of Colorado River water that has been developed or will be developed as ICUA under this part also must be supported by a Section 5 water delivery contract.

(1) An authorized entity may satisfy the requirement of this section through a direct contract with the Secretary. An authorized entity also may satisfy the Section 5 requirement of the BCPA, for purposes of this part, through a valid subcontract with an entitlement holder that is authorized by the Secretary to subcontract for the delivery of all or a portion of its entitlement.

(2) For storing entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be stored, the Storage and Interstate Release Agreement will serve as the vehicle for satisfying the Section 5 requirement for the release or diversion of that water.

(3) For consuming entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be released by the Secretary as ICUA, the Storage and Interstate Release Agreement will serve as the vehicle for

satisfying the Section 5 requirement for the release or diversion of that water.

(f) *Anticipatory release of ICUA.* The Secretary may release ICUA to a consuming entity before the actual development of ICUA by the storing entity if the storing entity certifies to the Secretary that ICUA will be developed during that same year that otherwise would not have existed.

(1) These anticipatory releases will only be made in the same year that the ICUA is developed.

(2) Before an anticipatory release, the Secretary must be satisfied that the storing entity will develop the necessary ICUA in the same year that the ICUA is to be released.

(g) *Treaty obligations.* Prior to executing any specific Storage and Interstate Release Agreements, the United States will consult with Mexico through the International Boundary and Water Commission under the boundary water treaties and other applicable international agreements in force between the two countries.

§ 414.4 Reporting requirements and accounting under Storage and Interstate Release Agreements.

(a) *Annual report to the Secretary.* Each storing entity will submit an annual report to the Secretary containing the material required by this section. The report will be due on a date to be agreed upon by the parties to the Storage and Interstate Release Agreement. The report must include:

(1) The quantity of water diverted and stored during the prior year under all Storage and Interstate Release Agreements; and

(2) The total quantity of stored water available to support the development of ICUA under each Storage and Interstate Release Agreement to which the storing entity is a party as of December 31 of the prior calendar year.

(b) *How the Secretary accounts for diverted and stored water.* The Secretary will account for water diverted and stored under Storage and Interstate Release Agreements in the records maintained under Article V of the Decree.

(1) The Secretary will account for the water that is diverted and stored by a storing entity as a consumptive use in the Storing State for the year in which it is stored.

(2) The Secretary will account for the diversion and consumptive use of ICUA by a consuming entity as a consumptive use in the Consuming State of unused apportionment under Article II(B)(6) of the Decree in the year the water is released in the same manner as any other unused apportionment taken by that State.

(3) The Secretary will maintain individual balances of the quantities of water stored under a Storage and Interstate Release Agreement and available to support the development of ICUA. The appropriate balances will be reduced when ICUA is developed by the storing entity and released by the Secretary for use by a consuming entity.

Subpart C—Water Quality and Environmental Compliance

§ 414.5 Water quality.

(a) *Water Quality is not guaranteed.* The Secretary does not warrant the quality of water released or delivered under Storage and Interstate Release Agreements, and the United States will not be liable for damages of any kind resulting from water quality problems. The United States is not under any obligation to construct or furnish water treatment facilities to maintain or improve water quality except as may otherwise be provided in relevant Federal law.

(b) *Required water quality standards.* All entities, in diverting, using, and returning Colorado River water, must:

(1) Comply with all applicable water pollution laws and regulations of the United States, the Storing State, and the Consuming State; and

(2) Obtain all applicable permits or licenses from the appropriate Federal, State, or local authorities regarding water quality and water pollution matters.

§ 414.6 Environmental compliance and funding of Federal costs.

(a) *Ensuring environmental compliance.* The Secretary will complete environmental compliance documentation, compliance with the National Environmental Policy Act of 1969, as amended, and the Endangered Species Act of 1973, as amended; and will integrate the requirements of other statutes, laws, and executive orders as required for Federal actions to be taken under this part.

(b) *Responsibility for environmental compliance work.* Authorized entities seeking to enter into a Storage and Interstate Release Agreement under this part may prepare the appropriate documentation and compliance document for a proposed Federal action, such as execution of a proposed Storage and Interstate Release Agreement. The compliance documents must meet the standards set forth in Reclamation's national environmental policy guidance before they can be adopted.

(c) *Responsibility for funding of Federal costs.* All costs incurred by the United States in evaluating, processing, and/or executing a Storage and Interstate Release Agreement under this part must be funded in advance by the authorized entities that are party to that agreement.

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federal register

Monday
November 1, 1999

Part VI

Department of Transportation

Federal Highway Administration

Transportation Equity Act for the 21st Century; Use of Uniformed Police Officers on Federal-Aid Highway Construction Projects; Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–1999–5387]

Transportation Equity Act for the 21st Century; Use of Uniformed Police Officers on Federal-Aid Highway Construction Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This notice invites public comments on issues relating to the legislative requirement to conduct a study and report to the Congress on the extent and effectiveness of use by States of uniformed police officers on Federal-aid highway construction projects. This is provided in section 1213 (c) of the Transportation Equity Act for the 21st Century (TEA–21).

DATES: In order for comments responding to issues raised by this notice to be considered during the critical early stages of the study, they should be submitted no later than January 3, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. Robinson, Office of Highway Safety Infrastructure (HMHS–20), (202) 366–2193; or Ms. Grace Reidy, Office of the Chief Counsel (HCC–32), (202)366–6226, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Background

Some States use uniformed police officers very extensively on their highway construction projects, while other States use virtually no police officers for work zone traffic control. Work zone safety has been a high priority issue for the FHWA, traffic engineering professionals and highway agencies. Section 1213 (c) of TEA–21, Public Law 105–178, 112 Stat. 107, 200(1998), Use of Uniformed Police Officers on Federal-aid Highway Construction Projects, requires the Department of Transportation to submit a report to Congress on the results of the study concerning use of uniformed police officers on Federal-aid highway construction sites no later than two years after the date of this section. Specific provisions are as follows:

(1) STUDY.—The Secretary of Transportation is required to conduct a study with States, State transportation departments, and law enforcement organizations, on the extent and effectiveness of use of uniformed police officers on Federal-aid highway construction projects.

(2) REPORT.—A report on the results of the study is to be submitted to Congress by June 9, 2000.

Although this study is mandated to be conducted with States, State transportation departments, and law enforcement organizations, other interested parties may comment where applicable. Comments received in response to this notice will constitute the informational basis for the study required by Section 1213(c). The results of this study will be used in the formulation of a report to Congress as to effectiveness of uniformed police officers on Federal-aid highway construction projects.

Comments and suggestions are invited concerning the extent and effectiveness of the use by States of uniformed police officers on Federal-aid highway construction projects. Of particular concern are safety, operational, and financial factors. Comments are requested specifically on the following questions; however, interested persons are encouraged to provide any information relevant to their experience and in whatever format proves most effective for conveying such information.

To the extent feasible, we encourage commenters to formulate their responses with reference to the questions provided below. This will assist the FHWA in evaluating study results and formulating an effective report to Congress. We recognize, however, that certain interested persons or organizations may wish to introduce information that is useful to our study but not conducive to the question/answer format prescribed here. We encourage and will actively consider any information responsive to the issue of stationing uniformed police officers on Federal-aid highway construction projects.

Questions

1. Please provide the name of a person in your agency that we might contact to obtain follow-up information.

NAME/RANK/ (OPTIONAL) _____

2. Law enforcement agencies please provide the following information:

ORGANIZATION _____

SIZE OF YOUR LAW ENFORCEMENT AGENCY _____

(No. of Officers)

NAME OF JURISDICTION _____

TYPE OF JURISDICTION ☐ State ☐ County ☐ Municipal ☐ Other *(please provide description)*

POPULATION of JURISDICTION (Check One):

☐ Less than 25,000 ☐ 25–50,000 ☐ 50–100,000 ☐ 100,000 or more

APPROXIMATE NUMBER OF HIGHWAY CONSTRUCTION PROJECTS IN WHICH YOUR AGENCY HAS BEEN INVOLVED (per year) _____

3. Does your agency have a policy to provide uniformed police officers to increase safety and operation on Federal-aid highway construction projects?

___YES ___NO

4. If you responded YES to Question 3, please answer the following:

☐ Please explain the policy and provide a copy.

☐ Who developed the policy?

☐ What has been the effect of the policy on the following: crashes, deaths, injuries, operations and public relations?

5. Since implementation of the policy, what has been the effect on injuries and fatalities on Federal-aid highway construction projects?

6. How many citations have been issued on Federal-aid highway construction projects in the last year?

7. Does your State conduct a training program for uniformed police officers regarding construction projects?

8. Does the training program include recognition and proper placement of

traffic control devices and other safety and operational factors?

9. Do uniformed police officers use marked police vehicles along/on highway construction projects? If yes, are the officers required to be out of the vehicles and visible to traffic?

10. Are only off-duty uniformed police officers used on Federal-aid highway construction projects or can on-duty police officers be used as well?

11. Who determines the number of uniformed police officers to be used in Federal-aid highway construction projects?

- ☐ Highway agency
- ☐ Law enforcement agency
- ☐ Joint effort (*please state between whom*)
- ☐ Other (*please describe*)

12. How is the number of uniformed police officers determined and deployed in Federal-aid construction projects?

13. Do you believe that the use of uniformed police officers on/along Federal-aid highway construction projects improves the safety and operations in work zones?

14. In addition to being in uniform, do police officers on Federal-aid construction projects wear any protective or high visibility clothing?

15. Do you believe that the use of uniformed police officers reduces the liability of the highway construction contractor?

16. Are there certain circumstances when uniformed police officers are always used (*e.g.*, nighttime construction, high-speed/high volume highways, etc.)? Please describe those circumstances.

17. Are other law enforcement activities effective due to the use of uniformed police officers on Federal-aid highway construction projects?

18. What is the source of funding for the use of uniformed police officers on Federal-aid highway construction projects?

- ☐ Highway construction funds
- ☐ Highway Administration funds
- ☐ Law enforcement appropriation funds
- ☐ Other (Please identify funding sources)

19. Have studies been conducted by your agency on the use of uniformed police officers in work zones?

20. Are uniformed police officers included during the planning process of a construction project?

Authority: 23 U.S.C. 315; sec. 1213(c), Pub. L. 105–178, 112 Stat. 107, 200(1998); 49 CFR 1.48.

Issued on: October 15, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–28517 Filed 10–29–99; 8:45 am]

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November 1, 1999

Part VII

Department of Education

34 CFR Parts 668, 682, and 685
Student Assistance General Provisions, Federal Family Education Loan Program, the William D. Ford Federal Direct Loan (Direct Loan) Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, and 685

RIN 1845–AA02

Student Assistance General Provisions, Federal Family Education Loan Program, the William D. Ford Federal Direct Loan (Direct Loan) Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: We amend the Student Assistance General Provisions regulations governing participation in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs) and the Federal Family Education Loan (FFEL) Program regulations. The student financial assistance programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The Federal Family Education Loan Program regulations govern the Federal Stafford Loan Program (subsidized and unsubsidized), the Federal Supplemental Loans for Students Program (no longer active), the Federal PLUS Program, and the Federal Consolidation Loan Program (formerly collectively known as the Guaranteed Student Loan Programs).

These regulations implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (Public Law 105–244, enacted October 7, 1998) (the 1998 Amendments) for the treatment of Title IV, HEA program funds when a student withdraws from an institution.

EFFECTIVE DATE: These regulations are effective July 1, 2000.

IMPLEMENTATION DATE: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA, that institutions may, at their discretion, choose to implement in their entirety all provisions in § 668.22 and related provisions in §§ 668.8, 668.14, 668.16, 668.24, 668.25, 668.26, 668.83, 668.92, 668.95, 668.164, 668.171, 668.173, 682.207, 682.209, 682.604, 682.605, 682.607, 685.211, 685.215, 685.305, and 685.306 on or after November 1, 1999. Furthermore, pursuant to Section 484B(e) of the HEA, institutions are not required to implement these provisions until October 7, 2000 (two years from the enactment of the 1998 Amendments). If an institution chooses to implement the provisions of section 484B of the HEA after publication of these final regulations but before October 7, 2000, the institution—

- Must implement these regulations in their entirety;
- Must apply these regulations to all students who withdraw on or after the institution's implementation of these regulations (*i.e.*, not on a student-by-student basis); and
- Cannot revert back to the old provisions of § 668.22.

For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dan Klock or Wendy Macias, U.S. Department of Education, 400 Maryland Avenue, S.W., ROB–3, Room 3045, Washington, DC 20202–5344. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On August 6, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 43024) proposing to implement statutory changes made to the HEA, by the 1998 Amendments for the treatment of Title IV, HEA program funds when a student withdraws from an institution. In the preamble to the NPRM, we discussed major changes to § 668.22 in the following areas:

- The conditions under which Title IV, HEA program funds would be required to be returned and the conditions under which a student would be owed a disbursement of Title IV, HEA program funds upon withdrawal of a student.
- The requirements for making a post-withdrawal disbursement to a student.
- The determination of a withdrawal date for a student who withdraws.
- The treatment of a leave of absence for Title IV, HEA program purposes.
- The calculation of the amount of Title IV, HEA program funds that a student has earned upon withdrawal, including differences in the calculation for clock-hour programs and credit-hour programs, and non-term programs and term programs.
- The responsibility of the institution to return Title IV, HEA program funds when a student withdraws.
- The responsibility of the student to return Title IV, HEA program funds upon withdrawal.
- The order in which Title IV, HEA program funds must be returned to the Title IV, HEA programs.
- A timeframe for the return of Title IV, HEA program funds by an institution, and a timeframe for an institution to determine a withdrawal date for a student who withdraws without notifying the institution.
- The consumer information that an institution must provide to a student regarding the results of a student's withdrawal.

In addition, in the preamble to the NPRM we discussed a proposed change to § 682.207(b)(1)(v) of the FFEL program regulations to require a lender that is making a direct disbursement to a student attending a foreign school to notify the foreign school that the disbursement was made.

These final regulations contain a few significant changes from the NPRM. These changes are explained fully in the *Analysis of Comments and Changes* elsewhere in this preamble.

Conforming changes have been made to the following sections: §§ 668.8, 668.14, 668.16, 668.24, 668.25, 668.26, 668.83, 668.92, 668.95, 668.164, 668.171, 668.173, 682.207, 682.209, 682.604, 682.605, 682.607, 685.211, 685.215, 685.305, and 685.306.

Implementation Date of These Regulations

Section 482(c) of the HEA (20 U.S.C. 1089(c)) requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. The sections designated by the Secretary and the corresponding conditions for early implementation are set out under the heading IMPLEMENTATION DATE, above.

Discussion of Student Financial Assistance Regulations Development Process

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the

Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 6, 1999. With the exception of provisions relating to the "50% discount" on Title IV grant funds that a student must return, which are located in § 668.22(h)(3)(ii), the proposed regulations reflected the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, 1999, and 176 comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes in the proposed regulations, and we do not respond to comments suggesting changes that the Secretary is not authorized by law to make.

Analysis of Comments and Changes

General

Comments: A few commenters believed that the proposed rules were too complicated. Some commenters requested that we prepare and distribute worksheets to clarify the application of the final regulations. A few commenters thought that we should distribute or make available a software program that institutions could use to calculate the treatment of Title IV, HEA program funds when a student withdraws. A couple of the commenters requested that we provide institutions with examples of how the regulations should be applied when a student withdraws during a summer term. A few commenters believed that the proposed rules simplified the process of returning Title IV, HEA program funds when a student withdraws.

Discussion: We believe that some of the commenters' general concerns about the complexity of the proposed rules may be caused by statutory provisions. We have responded throughout the *Analysis of Comments and Changes* to commenters' specific concerns about complexity caused by particular provisions of the proposed regulations. Prior to the effective date of these final regulations, we will provide worksheets and software that may be used to calculate the treatment of Title IV, HEA program funds when a student withdraws. We will provide examples of and guidance on the applicability of the final regulations after publication through appropriate Department publications and training.

Changes: None.

Comments: Several commenters contended that these proposed rules would have a negative financial impact on institutions. Several of these commenters suggested changes to the "50 percent discount" requirement of § 668.22(h) to alleviate some of the financial burden. Seven of the commenters stated that, because two calculations were now necessary, one to determine the treatment of Title IV, HEA program funds, and one to determine earned institutional charges under the institution's refund policy, their institution would have to expend funds to hire additional personnel. Two of the commenters contended that institutions would have to expend funds to purchase software in order to perform the calculation correctly.

Discussion: To the extent that there is any financial burden, we believe that it is due to the statutory changes made to the requirements for determining the amount of Title IV, HEA program funds that must be returned to the Title IV, HEA programs. Commenters' more specific concerns with the financial implications of this rule, including the concern that institutions will now have to perform two calculations and comments on the "50 percent discount," are discussed in detail in the *Analysis of Comments* and Changes for § 668.22(g) and § 668.22(h). As noted above, we will assist institutions with the calculation of earned Title IV, HEA program funds when a student withdraws by providing worksheets, software, and examples of the calculation.

Changes: None.

Comments: A couple of commenters felt that the proposed rules are unfair to clock hour institutions. One commenter, a federation representing the professional beauty industry, believed that the rules unfairly penalize students who attend clock hour institutions, such as cosmetology schools. The commenter was concerned that, as a result, students would be discouraged from pursuing cosmetology careers.

Discussion: We believe that the provisions that specifically affect clock-hour institutions are in keeping with statutory intent. These provisions are an attempt to recognize the manner in which clock-hour programs operate. We have responded throughout the *Analysis of Comments and Changes* to commenters' concerns in this area.

Changes: None.

Effective Date

Coments: A few commenters requested that we delay implementation of the final rules in order to establish pilot programs to evaluate the impact of the rules on students and institutions, and to allow institutions the time necessary to properly implement the final regulations. One commenter suggested that institutions that choose to implement section 484B of the HEA prior to the required implementation date of October 7, 2000 be used as the pilot sites. Specifically, one of these commenters contended that the rules should be delayed because institutions have been, and will continue to be, focused on Year 2000 (Y2K) issues, and will not be able to focus on the implementation of the new rules. One commenter recommended that these rules be effective for students who begin an enrollment period on or after October 7, 2000 and withdraw from the institution on or after October 7, 2000. One commenter requested that institutions be permitted to implement early (prior to the required effective date of October 7, 2000) one portion of the requirements of § 668.22 without having to implement the entire requirements.

Discussion: We believe that the statutorily required implementation date of October 7, 2000 provides institutions with sufficient time to assess the impact of these requirements, to make any necessary administrative and systems changes, and to notify all potentially affected students of the changes. As these provisions of section 484B of the HEA apply to students who withdraw from an institution, we believe that these regulations should apply to any student who withdraws on or after October 7, 2000, rather than to any student who begins an enrollment period on of after that date and subsequently withdraws. Because the provisions of section 484B of the HEA, as revised by the 1998 Amendments, are a significant departure from the requirements of section 484B prior to the 1998 Amendments, we do not believe that it is reasonable to permit an institution to implement select portions of the implementing final regulations prior to October 7, 2000. If an institution chooses to implement these final regulations prior to October 7, 2000, it must implement them in their entirety.

Changes: None.

Section 668.22(a) General

Definition of a Title IV Recipient

Comments: A few commenters asked us to clarify who is a "recipient of Title IV grant or loan assistance" for purposes of the requirements for the treatment of Title IV, HEA program funds when a student withdraws. Some of these commenters believed that a student should be counted as a Title IV, HEA program recipient only if the student receives a disbursement of Title IV, HEA program funds before he or she withdraws. One commenter felt that a student should also be considered a Title IV, HEA program recipient if the student is entitled to a late disbursement. One commenter maintained that a student who received only Federal Work-Study funds should not be considered a Title IV, HEA program recipient. A couple of the commenters contend that it is hard to identify students who withdraw if they have not received aid. One of these commenters asserted that most institutional processing systems identify only students who have received Title IV, HEA program assistance and alert the financial aid or bursar office when those students withdraw. One commenter asked whether the rules would apply to a student who withdrew if the student had applied for a Title IV, HEA loan, but the institution had not yet certified the loan.

Discussion: We believe that it is consistent to define a Title IV, HEA program recipient for purposes of this section as a student who has met the requirements of § 668.164(g)(2). When a student withdraws or makes certain other changes to his or her enrollment status, the student is no longer eligible for a regular disbursement of Title IV, HEA program funds. Section 668.164(g)(2) lists the conditions that must have been met prior to such a change in enrollment status in order for the institution to make a late disbursement. For example, for a student to receive a Direct loan, the institution must have created the electronic origination record for the loan; for the student to receive a FFEL Program loan, the institution must have certified the loan. The conditions listed in § 668.164(g)(2) are also used for purposes of determining when a post-withdrawal disbursement of Title IV, HEA funds may be disbursed. Therefore, we have defined in the regulations a Title IV grant or loan recipient for purposes of this section as a student who has met the requirements of § 668.164(g)(2). In keeping with section 484B(a)(1) of the HEA, which provides that the requirements of section 484B of the HEA are not applicable to recipients of Federal Work-Study funds, a student would not be considered a Title IV, HEA program recipient under this section if the only Title IV, HEA program assistance that the student had received or could have received, was Federal Work-Study funds. Therefore, a Title IV, HEA program recipient for purposes of this section is a student who has met the requirements of § 668.164(g)(2).

Changes: The definition of a "recipient of Title IV grant or loan assistance" has been added to § 668.22(l).

LEAP Program Funds

Comments: One commenter believed that it is unfair to require an institution to count the entire amount of Leveraging Education Assistance Partnership (LEAP) funds in the calculation of the amount of Title IV, HEA program assistance that a student has earned upon withdrawal, rather than just the Federal share of the grant. The commenter stated that their institution's State Student Aid Commission identifies their State grant program as containing LEAP funds. The commenter noted that the State Student Aid Commission expects the institution to return any unearned portion of the grant, based on the institution's refund policy, to the State. The commenter is concerned that if the institution complies with both the requirements for the treatment of Title IV, HEA program funds when a student withdraws and the State's return requirements, it will end up returning more than the original amount of the grant. One commenter supported the position that LEAP funds that are not identified as LEAP funds do not need to be included in the calculation of the treatment of Title IV, HEA program funds if a student withdraws.

Discussion: Section 484B of the HEA excludes only Federal Work-Study funds from the calculation of earned Title IV, HEA program funds when a student withdraws. Once a State agency identifies a grant as LEAP funds, the entire amount of the grant is considered a LEAP grant and is subject to the Federal regulations governing the LEAP program. Therefore, if a State agency specifically identifies a grant as LEAP funds, the entire amount of the grant must be included in the calculation of earned Title IV, HEA funds. This guidance is consistent with the guidance in Dear Colleague Letter GEN–89–38. We acknowledge that the interplay between the requirements of this section and State requirements for the handling of LEAP funds may cause some difficulties for institutions. We will work with the States to attempt to resolve these difficulties.

Changes: None.

Title IV Aid Disbursed

Comments: A few commenters objected to our assertion in the preamble to the proposed rule that a pattern or practice of inadvertent overpayments—where an institution disbursed Title IV, HEA program funds to a student who has withdrawn because the institution was unaware of the student's withdrawal—would be questioned in a program review. A few commenters contended that what we refer to as "inadvertent overpayments" are late disbursements and, therefore, are permissible. The commenters believed that it is inconsistent to allow an institution to count inadvertent overpayments as Title IV, HEA program aid disbursed, and then sanction an institution for making the overpayments.

One commenter felt that our assertion is inconsistent with preamble language that "some aspects of the withdrawal process cannot occur until the institution is aware that the student has withdrawn." One commenter believed that an institution should not be sanctioned for the practice of disbursing funds to withdrawn students if the institution had no evidence to the contrary that the student was still enrolled at the time the funds were disbursed. The commenter believed that an institution has fulfilled its obligation to ensure that a student is eligible by looking at the institution's data to ensure that the student is an active, current, student who meets satisfactory academic progress and other eligibility requirements. One commenter asserted that institutions increasingly rely on computer processing of Title IV, HEA program funds in order to process those funds as expeditiously and efficiently as possible. The commenter noted that if a student withdraws from an institution without notification, there is no way to prevent such inadvertent overpayments unless the institution takes attendance for every class; an option that the commenter felt was unduly burdensome. One commenter questioned how many inadvertent overpayments would be considered a "pattern or practice" of making inadvertent overpayments.

Discussion: As we noted in the preamble to the proposed rule, we agreed to permit an institution to include inadvertent overpayments in the calculation of total aid disbursed only for the administrative ease of the

institution. Specifically, the inclusion of these inadvertent overpayments in total aid disbursed would prevent the burden of an institution having to return Title IV, HEA program funds, only to have to disburse them again if a post-withdrawal disbursement was due. As stated in the NPRM, if we were to sanction a practice of inadvertent overpayments we would be sanctioning violations of other Title IV, HEA program regulations that require that an institution may disburse Title IV, HEA program funds only if the student is eligible to receive those funds.

We note that these disbursement requirements are not new. As such, an institution would be expected to already have had in place a mechanism for making the necessary eligibility determinations prior to the disbursement of any Title IV, HEA program funds, such as a process by which withdrawals are reported immediately to those individuals at the institution who are responsible for making Title IV, HEA program disbursements. If an institution does not have the proper mechanisms in place, the institution must make the necessary changes to the way it currently disburses Title IV, HEA program funds to come into compliance.

We do not agree with the commenters who believe that these inadvertent overpayments are legitimate late disbursements. We note that these overpayments are not late disbursements either; late disbursements are made in accordance with specific regulatory requirements *after* the institution is aware that the student has withdrawn.

We do not believe that it is appropriate to define a set number or percentage of inadvertent overpayments that would constitute a pattern or practice of making inadvertent overpayments. The determination of a pattern or practice must be made in conjunction with an assessment of a specific institution's demonstrated willingness and ability to prevent inadvertent overpayments.

Changes: None.

Comments: A couple of commenters believed that institutions should be permitted to replace a withdrawn student's Title IV, HEA loan funds with Title IV, HEA grant funds that the student was otherwise eligible to receive before performing the calculation for the treatment of Title IV, HEA program funds when a student withdraws. The commenters felt that it is always in the best interest of the student and the Federal government to reduce student indebtedness, particularly for students who have not completed their education.

Discussion: We continue to believe that it is inappropriate for an institution to disburse Title IV, HEA program funds to a student who has withdrawn unless the institution has determined under these regulations that the student has earned more funds than were disbursed. Therefore, an institution may not alter the amounts of Title IV, HEA grant and loan funds that were disbursed prior to the institution's determination that the student withdrew.

Changes: None.

Post-Withdrawal Disbursements

Comments: Some commenters confused the requirements for late disbursements that are made to students who have withdrawn from an institution with the late disbursements requirements that regulate how and when late disbursements are made to students for other reasons, such as a change in enrollment status to less than half-time.

Discussion: We believe that this confusion may be alleviated if disbursements that are made to students who have withdrawn from an institution are referred to as "post-withdrawal disbursements," rather than "late disbursements."

Changes: References to "late disbursements" have been changed to "post-withdrawal disbursements" where appropriate.

Comments: Several commenters did not believe that Title IV, HEA program funds should be disbursed directly to a student who has withdrawn. Some of these commenters did not believe that this was the intent of Congress. In particular, many of these commenters did not believe that it was ever appropriate to disburse Title IV, HEA program funds to a withdrawn student if the student owed any money to the institution.

Several of the commenters specifically questioned whether an institution must disburse a post-withdrawal disbursement check if a student no longer has any institutional charges. One commenter asserted that disbursements to withdrawn students will result in Title IV, HEA funds being used for noneducationally-related expenses. A few commenters believed that direct disbursements of loans to withdrawn students would imprudently increase a withdrawn student's indebtedness and chance of default. To mitigate this, and to reduce institutional burden, a few commenters recommended that an institution be permitted to determine when a post-withdrawal disbursement of Title IV, HEA program funds should be disbursed directly to a student.

A few commenters believed that the existing late disbursement regulations should be used instead of the proposed rules for post-withdrawal disbursements. One commenter suggested that earned Title IV, HEA program funds in excess of money owed to the institution should be used to reduce any Title IV, HEA program loan debt of the student. Another commenter alleged that the post-withdrawal disbursement requirements conflict with other statutory requirements that allow the institution to be the custodian of the Title IV, HEA program funds and control whether late disbursements are made and how they are used.

Discussion: We believe that the commenters' contention that it was not the intent of Congress to directly provide withdrawn students with earned Title IV, HEA program funds is unfounded. Section 484B(a)(4)(A) of the HEA requires that disbursements of earned funds be provided to a student if the student has received less grant or loan assistance than the amount he or she has earned. The statute does not require that the disbursement of earned aid can only be applied to unpaid charges at the institution. As stated in the preamble to the NPRM, the determination of the amount of Title IV, HEA program assistance that the student has earned has no relationship to a student's actual incurred educational costs. The amount of earned Title IV, HEA program funds is based on the amount of time that the student spent in attendance and is a determination of aid that is earned by the student, not money earned by the institution. Therefore, we believe that it would be in direct violation of the statute to permit an institution to decrease this amount.

We continue to believe that it is appropriate to be consistent with the cash management requirements for disbursing Title IV, HEA program funds, which do not permit an institution to credit a student's account with Title IV, HEA program funds other than for tuition, fees, and room and board (if the student contracts with the institution)—without the student's permission. If an institution does not have permission from the student (or parent for a PLUS loan) prior to the student's withdrawal and does not obtain that permission after the student's withdrawal, the undisbursed earned funds *must* be offered to the student and cannot be used by the institution to pay remaining institutional charges other than for tuition, fees, and room and board (if the student contracts with the institution).

Changes: None.

Comments: A few commenters felt that the proposed post-withdrawal disbursement procedures are too burdensome and costly for institutions to implement. One commenter noted that it would be impossible to process a post-withdrawal disbursement in a timely manner for a student when the institution cannot locate the student immediately. The commenter suggested that it would be less burdensome to permit an institution to credit a student's account with earned Title IV, HEA program funds for current charges for educationally-related activities other than tuition, fees, and room and board (if the student contracts with the institution) unless the student or parent specifically denied permission to the institution within a certain number of days. One commenter supported the proposed timeframes for notification, response to, and disbursement of post-withdrawal disbursements. Two commenters agreed that 90 days after the date of the institution's determination that the student withdrew was an appropriate amount of time for institutions to have to make any accepted post-withdrawal disbursements to a student (or parent for a PLUS loan). A couple of commenters felt that it was unreasonably burdensome to require institutions to notify a student or parent of the outcome of any post-withdrawal disbursement request if the student's or parent's authorization was not received at all, or was not received within the 14 day timeframe. One of the commenters thought that this second notification that simply restated that the student had lost the opportunity to accept a post-withdrawal disbursement would be confusing to a student who had never responded to the original notification. A couple of commenters applauded our determination that a single notification could be used for all of the notification requirements for post-withdrawal disbursements, except for the institution's notification to inform the student or parent electronically or in writing concerning the outcome of any post-withdrawal disbursement request.

Discussion: The statute requires that earned funds be provided to the student. We recognize that it may be difficult to locate a student who has left the institution. This was addressed in negotiated rulemaking and it was concluded that the requirements for making a post-withdrawal disbursement to a student provide that the institution must offer in writing to the student (or parent for PLUS loan funds) any amount of a post-withdrawal disbursement that is not credited to the student's account. If a response is not received from the student or parent, is not received within the permitted timeframe, or the student declines the funds, the institution would return any earned funds that the institution was holding to the Title IV, HEA programs. As stated previously in the *Analysis of Comments and Changes,* we continue to believe that it is appropriate to be consistent with the cash management requirements for disbursing Title IV, HEA program funds, which do not permit an institution to credit a student's account with Title IV, HEA program funds for current charges for educationally-related activities—other than tuition, fees, and room and board (if the student contracts with the institution)—without the student's permission.

We agree with the commenters who believe that it is sometimes unreasonably burdensome or redundant to require institutions to notify a student or parent of the outcome of any post-withdrawal disbursement request. Therefore, if an authorization from the student (or parent for a PLUS loan) is never received, or if the post-withdrawal disbursement is accepted, the institution does not need to notify the student of the outcome of the post-withdrawal disbursement request. Presumably, a student (or parent for PLUS loan funds) who has never responded will understand that the post-withdrawal disbursement will not be made. Further, a student (or parent for PLUS loan funds) who has accepted the funds will likely understand that the amount of the post-withdrawal disbursement that he or she accepts will be provided, and any unaccepted amount will be returned. However, in the case of a student (or parent for PLUS loan funds) whose acceptance was not received within the 14 day timeframe and the institution does not otherwise choose to make the post-withdrawal disbursement, the student (or parent for a PLUS loan) may assume incorrectly that his or her acceptance of a post-withdrawal disbursement has been received within the timeframe and that the post-withdrawal disbursement will be made. Therefore, if a student's (or parent's for PLUS loan funds) acceptance was not received within the 14 day timeframe and the institution does not otherwise choose to make the post-withdrawal disbursement, the institution must notify the student (or parent for PLUS loan funds) that the post-withdrawal disbursement will not be made and why.

Changes: Section 668.22(a)(4)(ii)(E) has been changed to reflect that an institution must notify a student (or parent for PLUS loan funds) if the student's (or parent's for PLUS loan funds) acceptance was received after the 14 day timeframe and the institution does not otherwise choose to make the post-withdrawal disbursement.

Comments: Several commenters questioned how an institution could verify the identity of the person claiming to be the student or parent if the student or parent calls the institution to accept earned Title IV, HEA program funds. Several commenters recommended that an institution be allowed to refuse to mail a check of earned Title IV, HEA program funds based on a phone call requesting that the check be sent to a particular address. A few commenters questioned whether the institution could insist that a student or parent come into the institution to pick up any post-withdrawal disbursements due.

Discussion: Obviously, we would not want an institution to disburse Title IV, HEA program funds to anyone other than the intended recipient. We do not regulate how an institution should ensure that Title IV, HEA program funds are disbursed to the proper individual. However, we do not believe that it would be reasonable to require a student who has withdrawn from an institution (or a parent of such a student, for PLUS loan funds) to pick up a post-withdrawal disbursement in person. Because the student is no longer attending the institution, it would not be unlikely that the student has moved out of the area and would not be able to return to the institution to pick up a post-withdrawal disbursement. Presumably, in the scenario presented by the commenters, the student or parent is calling in response to the notification the institution mailed to the student or parent about the funds available from a post-withdrawal disbursement. We believe that it is reasonable to assume that a check mailed to the same address will reach the proper party.

Changes: None.

Comments: A few commenters felt that post-withdrawal disbursements should be available to pay prior year charges. The commenters maintained that this would meet the intent of the negotiating committee to mirror the cash management rules as closely as possible.

Discussion: We agree that it is desirable to mirror the cash management regulations as closely as possible. Therefore, we agree that an institution should be allowed to credit a student's account for minor prior award year charges. Institutions should make every effort to explain to a student that all or a portion of his or her post-withdrawal disbursement has been used

to satisfy any charges from prior award years.

Changes: Section 668.22(a)(4)(i)(A) has been amended to permit an institution to credit a student's account to pay minor prior year charges in accordance with § 668.164(d)(2)(ii).

Comments: One commenter maintained that the requirement that an institution must offer a post-withdrawal disbursement to a student within 30 days of the date that the institution determines that the student withdrew is inconsistent with regulations that require an institution to disburse loans within three business days of the institution's receipt of the funds.

Discussion: Because an institution must disburse Title IV, HEA program funds as soon as possible, but no later than three business days after receipt of the funds, we believe that in most cases, an institution will not possess undisbursed funds for a student as of the date that the institution determines that the student withdrew. An institution should not request Title IV, HEA program funds for a post-withdrawal disbursement unless and until it has determined: (1) That a post-withdrawal disbursement is due, (2) the amount of the post-withdrawal disbursement, and (3) that the post-withdrawal disbursement can be disbursed within three business days of receipt.

Changes: None.

Section 668.22(b) Withdrawal Date for a Student Who Withdraws From an Institution That Is Required To Take Attendance

General Withdrawal Issues

Comments: A few commenters asserted that the provisions in the NPRM for determining a student's withdrawal date favor institutions that do not take attendance. In particular, a couple of commenters noted that, because of the difference in requirements for determining withdrawal dates for institutions that do not take attendance, in some circumstances, two students who cease attendance on the same day, one at an institution that is required to take attendance and one at an institution that is not required to take attendance, may have different withdrawal dates. The commenters noted that this would result in the students earning different amounts of Title IV, HEA program aid. The commenters believed that the NPRM will encourage institutions that do take attendance to stop taking it, which the commenters felt would be harmful to students. One commenter thought that it was particularly unfair for students who withdraw without notification from institutions that are not required to take attendance to earn 50 percent of their Title IV, HEA program aid.

Discussion: The provisions that the commenters referred to are those that are prescribed by the statute. Extending the provisions in the statute that apply to institutions that are not required to take attendance to institutions that are required to take attendance would not be permitted under the law.

Changes: None.

Comments: Some commenters questioned how an institution would determine a student's withdrawal date if the student withdrew from some, but not all of his or her classes.

Discussion: The provisions of section 484B of the HEA and these implementing regulations apply to a student who began attending an institution and withdrew from all classes at the institution. They do not apply to a student who withdraws from some classes but continues to be enrolled in other classes, or a to student who leaves an institution prior to the student's first day of class.

Changes: None.

Required To Take Attendance

Comments: Several commenters asked for clarification of the definition of an institution that is required to take attendance for purposes of this section. A few commenters supported the position in the NPRM that an institution that opts to take attendance would not be considered an institution that is required to take attendance for Title IV, HEA program purposes. One commenter believed that all institutions that are required to take attendance, whether required by an outside entity or not, should be considered institutions that are required to take attendance for Title IV, HEA purposes.

A few commenters asked if an institution must use attendance records to determine a student's withdrawal date if the institution is not required to take attendance, but some faculty members do take attendance. One commenter asked if an institution would be considered an institution that is required to take attendance if the institution's State licensing agency or accrediting agency provided institutions with the option of taking attendance and the institution opts to take attendance. One commenter wanted to know if an institution would be considered to be required to take attendance by an outside entity if the institution's State licensing agency does not directly require an institution to take attendance, but requires the institution to track students, so in effect, the institution has to take attendance. For example, the commenter noted that some institutions are required to follow the State agency's refund policy regulations which require the institution to refund tuition and fees based on the student's last date of class attendance. The commenter also provided the example of an institution's State licensing agency regulations that require the institution to drop a student if the student misses more than a certain number of days or hours in a term.

Two commenters believed that an institution's State licensing agency and accrediting agency should be considered the only outside entities that can require the institution to take attendance for purposes of the treatment of Title IV, HEA program funds when a student withdraws. Some commenters asked what requirements would apply for determining a student's withdrawal date if an institution is required to take attendance by an outside entity, such as the Department of Veterans Affairs, that requires the institution to take attendance for recipients of the entity's assistance only.

Discussion: We believe that only an institution that is required to take attendance by an outside entity should be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date. Therefore, an institution that elects to take attendance, including an institution that voluntarily complies with an optional attendance requirement of an outside entity, would not be considered an institution that is required to take attendance. However, we believe that if any requirements of an outside entity result in an institution having to take attendance, the institution would be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date. So, in the two examples provided by the commenter (one where the state agency requires the institution to refund tuition and fees based on the student's last date of class attendance and the other where state agency regulations require the institution to drop a student if the student misses more than a certain number of days or hours in a term) the institution would be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date.

We do not agree that State licensing agencies and accrediting agencies should be considered the only outside entities that can require the institution to take attendance for purposes of the treatment of Title IV, HEA program funds when a student withdraws. We

believe that if an institution has attendance records as the result of the requirements of any outside entity, those attendance records must be used to determine a student's withdrawal date. We also believe that if an institution is required to take attendance for only some students by an outside entity, the institution must use those attendance records for only those students to determine the student's withdrawal date (the last date of academic attendance). The institution would not be required to take attendance for any of its other students, or to use attendance records to determine any of its other students' withdrawal dates, unless the institution is required to take attendance for those students by another outside entity. For example, 10 students at Peabody University receive assistance from the Veterans Administration (VA). The VA requires the institution to take attendance for the recipients of the VA education benefits. Peabody University is not required by any other outside entity to take attendance for any of its other students. Seven of the 10 students who receive VA benefits are also Title IV, HEA program recipients. If any of those seven students withdraw from the institution, the institution must use the VA required attendance records for those students. For all other Title IV, HEA program recipients at Peabody University that withdraw, the institution must determine the withdrawal date in accordance with the requirements for students who withdraw from an institution that is not required to take attendance (§ 668.22(c)). We believe that requiring an institution to use its attendance records to determine the withdrawal date of a student for which another outside entity requires that attendance be taken is consistent with our view that the goal in defining a student's withdrawal date is to identify the date that most accurately reflects the point when the student ceased academic attendance, and should be based on the best information available.

Changes: We have changed § 668.22(b)(3) to clarify that if an institution is required by an outside entity to take attendance for only some of its students, the institution must use those attendance records for those students to determine the withdrawal date.

Comments: Several of the commenters asked what an institution's official attendance record would be. The commenters noted that an institution may have a master attendance record in addition to the roll books kept by the instructors. Several commenters asked how an institution would determine a student's withdrawal date if one of the student's instructors took attendance, but the others did not. A couple of commenters wanted to know how to determine a student's withdrawal date if faculty members' attendance records differed.

Discussion: If an institution is required to take attendance, it is up to institution to ensure that accurate attendance records are kept for purposes of identifying a student's last date of academic attendance. An institution must also determine which attendance records most accurately support its determination of a student's withdrawal date and support its use of one date over another if the institution has conflicting information.

Changes: None.

Comments: One commenter agreed that the withdrawal date for a student who withdraws from an institution that is required to take attendance should be the last date of academic attendance. A couple of commenters believed that an institution should have the discretion to use a student's last date of academic attendance as the *basis* for determining the students withdrawal date, rather than as the *actual* withdrawal date.

One commenter asserted that Title IV, HEA program assistance earned is not a reflection of time in academic attendance but, rather, is a reflection of institutional costs. As such, the commenter believed that the student's withdrawal date should reflect that the costs are incurred by the student after the student's last date of academic attendance. The commenter stated that using as a student's withdrawal date a point beyond the student's last date of attendance would be consistent with some institutional policies. The commenter contended that Congress did not intend that a student's withdrawal date at an institution that is required to take attendance be limited to the last date of academic attendance.

One commenter believed that an institution that is required to take attendance should be allowed to use as a student's withdrawal date the student's last date of attendance at an academically-related activity as documented by the institution. The commenter believed that it would be unfair to allow institutions that are not required to take attendance to count a student's subsequent academic activity, while not extending this option to institutions that are required to take attendance.

A couple of commenters also maintained that the provision for institutions that are not required to take attendance that provides that the withdrawal date for a student that withdrew without notification is the midpoint of the payment period or period of enrollment, should be extended to institutions that are required to take attendance. One commenter noted that this extension may be necessary if an institution that is required to take attendance has a student who takes a portion of their program at an institution that is not required to take attendance under a consortium agreement. The commenter believed that if the student withdrew from the non-attendance taking institution without providing notification, the student's withdrawal date should be the midpoint of the payment period or period of enrollment.

Discussion: Section 484B(c)(1)(B) of the HEA provides that institutions that are required to take attendance must determine a student's withdrawal date from its attendance records. We believe that the interpretation of the statute that is most in line with our goal of determining the date that most accurately reflects the point when a student ceased academic attendance defines a student's withdrawal date as the last date of academic attendance, as determined by the institution from its attendance records. We note that if a student continues to reside at the institution and consume goods and services past this point, the institution is not precluded from charging the student for these expenses. We believe that the statute makes clear that an institution that is required to take attendance and, therefore, has an established mechanism for tracking a student's attendance, must use that mechanism to determine the point when the student ceased academic attendance. We believe that a student's last date of academic attendance, as determined by the institution from its attendance records, accurately reflects the point when a student ceased academic attendance. The option of using a last date of attendance at an academically-related activity as documented by the institution has been extended to institutions that do not take attendance in order to permit the institutions to meet more precisely the goal of identifying as accurately as possible the point when the student ceased academic attendance.

The statute does not permit an institution that is required to take attendance to use the midpoint of the payment period or period of enrollment as the withdrawal date for a student that withdrew without notification. In the case of a student who is attending both an institution that is required to take attendance and an institution that is not

required to take attendance through a consortium agreement, in accordance with § 600.9 of the Institutional Eligibility regulations and § 690.9 of the Federal Pell Grant Program regulations, the institutions must specify as part of the consortium agreement which institution will handle the administration of Title IV, HEA program funds, which would include the determination of Title IV, HEA program funds earned by students upon withdrawal. The designated institution must take on all aspects of the administration of Title IV, HEA program funds.

Changes: None.

Comments: A few commenters believed that institutions that take attendance for only a short period of time should be considered institutions that are required to take attendance for Title IV, HEA purposes. Some of these commenters believed that if other agencies can require attendance for specific periods for their purposes, so can the Department. A few commenters supported the position taken in the NPRM that an institution that is required to take attendance for a portion of the payment period or period of enrollment should not be considered an institution that is required to take attendance for Title IV, HEA purposes. One of these commenters contended that attendance records that are kept for census purposes would not be appropriate for determining a student's withdrawal date for Title IV, HEA purposes.

Discussion: Although we believe that in some instances, the use of attendance records for an institution that is required to take attendance for a portion of the payment period or period of enrollment may meet our goal of using the best date available, we understand that in other instances, these records may not be appropriate for determining a student's withdrawal date.

Changes: None.

Comments: Some commenters believe that it would be unfair to use the student's last date of academic attendance as the withdrawal date for a student that does not return from an approved leave of absence.

Discussion: This issue is discussed under the *Analysis of Comments and Changes* for § 668.22(c).

Changes: None.

Section 668.22(c) Withdrawal Date for a Student Who Withdraws From an Institution That Is Not Required To Take Attendance

Official Notification

Comments: Several commenters asked for clarification of the meaning of "intent to withdraw." The commenters wanted to know if a student who is only discussing and exploring the option of withdrawing would be considered a student who is providing the institution with his or her intent to withdraw. A couple of commenters suggested that only written submissions from the student specifying that the student intended to withdraw should be accepted. One of the commenters felt that oral notifications should not be allowed because they are subject to disagreement over what was said and when it was said. The commenter also believed that oral notifications are subject to abuse because an individual other than the student could phone the institution and withdraw the student.

Several commenters wanted to know if a student would be considered to have provided official notification to the institution of the student's intent to withdraw if a student runs into an employee of the designated office for official notification of intent to withdraw out in the community and mentions that they might not be returning to school.

A few commenters did not believe that the date that a student notifies the institution of his or her intent to withdraw is an accurate withdrawal date for a student who never actually withdraws, for a student who does not withdraw until a future date, or for a student who ceased attendance prior to the notification. One commenter suggested that an institution be permitted to use the earlier of the last date of class attendance as certified by the student, or the date the student officially submits paperwork to begin the withdrawal process.

One commenter supported the position taken in the NPRM that an institution may designate the office or offices that a student must notify in order for the notification to count as official notification.

Discussion: Intent to withdraw, as provided for in section 484B(c)(1)(A) of the HEA, means that the student indicates that he or she has either ceased to attend the institution and does not plan to resume academic attendance, or believes at the time he or she provides notification that he or she will cease to attend the institution. A student who contacts an institution and only requests information on aspects of the withdrawal process, such as the potential consequences of withdrawal, would not be considered a student who is indicating that he or she plans to withdraw. However, if the student indicates that he or she is requesting the information because he or she plans to cease attendance, the student would be considered to have provided official notification of his or her intent to withdraw.

At negotiated rulemaking, it was discussed and understood that notification of intent to withdraw that a student provided orally would be sufficient. We believe that a student's oral notification to an institution is a legitimate means of communicating to the institution his or her intent to withdraw. We believe that requiring all students to provide a written notice of intent to withdraw would unfairly limit and possibly delay notifications of withdrawal. The responsibility for documenting oral notifications is the institution's; however, the institution may request, but not require, that the student confirm his or her oral notification in writing.

Official notification of intent to withdraw is notice that a student provides to an office designated by the institution. If a student provides notification to an employee of that office while that person is acting in his or her official capacity, the student has provided official notification. If the student provides notification to an employee of that office while that person is not acting in his or her official capacity, we would expect the employee to inform the student of the appropriate means for providing official notification of his or her intent to withdraw.

The statute provides that the withdrawal date for a student who withdraws by providing notification to an institution that is not required to take attendance is the date that the student began the institution's withdrawal process or otherwise provided official notification of his or her intent to withdraw. Although stated in the NPRM, we believe that it is important to emphasize that an institution that is not required to take attendance may always use a last date of attendance at an academically-related activity as a student's withdrawal date. Therefore, if a student begins the institution's withdrawal process or notifies the institution of his or her intent to withdraw and continues to attend the institution before actually withdrawing, the attendance subsequent to the student's notification may be taken into account by the documentation of a last date of attendance at an academically-related activity. Likewise, an institution could use an earlier last documented date of attendance at an academically-related activity if this date is a more accurate reflection of the student's withdrawal date than the date that the student begins the institution's withdrawal process or notifies the institution of his or her intent to

withdraw. We would also like to emphasize that the requirements of these regulations for the treatment of Title IV, HEA program funds when a student withdraws do not apply to a student who does not actually cease attendance at the institution.

Section 484B(c) of the HEA makes clear that the determination of a student's withdrawal date is the responsibility of the institution. Therefore, the institution, not the student, must document a student's attendance at an academically-related activity in order to be able to use the date of that attendance as the student's withdrawal date. A student's certification of attendance that is not supported by documentation by the institution would not be acceptable documentation of the student's last date of attendance at an academically-related activity.

Changes: We have changed § 668.22(c)(1)(ii) to make clear that a student has provided official notification to the institution of his or her intent to withdraw if the student indicates an intent in writing or orally.

Resolving Instances Where a Student Triggers Two Dates

Comments: One commenter believed that it is unnecessary to define the withdrawal date for a student that both begins the institution's withdrawal process and also provides official notification to the institution of his or her intent to withdraw, as the earlier of these two dates, because a student cannot otherwise provide official notification to the institution without having already begun the institution's withdrawal process.

Discussion: The commenter's assertion that a student cannot otherwise provide official notification to the institution without having already begun the institution's withdrawal process is incorrect. The example given in the preamble to the NPRM illustrates one scenario where a student may otherwise provide official notification to the institution prior to beginning the institution's withdrawal process. In that example, a student calls the institution's designated office and states his or her intent to withdraw on November 1. On December 1, the student begins the institution's withdrawal process by submitting a withdrawal form.

Changes: None.

Withdrawals Without Notification

Comments: One commenter believed that use of the midpoint as the withdrawal date for a student who does not begin the institution's withdrawal process or otherwise provide official notification to the institution of his or her intent to withdraw penalizes students who provide notification of withdrawal. The commenter asserted that this provision provides students with an incentive to leave without notification, which will only add to the institution's administrative burden. The commenter believed that the withdrawal date for an unofficial withdrawal should be the student's last date of attendance or the date of the last homework assignment submitted by the student.

One commenter contended that an institution cannot determine until the end of the term that a student has really dropped out because the student would always have the right to return. A couple of commenters maintained that there is no reliable way to determine that a student has dropped out of the institution. For example, one commenter noted that all failing grades for a student would not necessarily mean that the student stopped attending. The commenter questioned how a program reviewer would identify students that have dropped out of the institution. Another commenter believed that other institutions often conclude that some students have completed a semester even though the students may have transferred to another institution. The commenter believed that the add-drop periods established by the institution could be used to more fairly interpret when students withdrew.

Discussion: Section 484B(c)(1)(iii) of the HEA provides that the withdrawal date for a student who does not begin the institution's withdrawal process or otherwise provide official notification to the institution of his or her intent to withdraw is the midpoint of the period for which assistance was disbursed. However, these regulations provide that an institution may always use an earlier or later last date of attendance at an academically-related activity as the student's withdrawal date.

It is the responsibility of the institution to develop a mechanism for determining whether a student who is a recipient of Title IV, HEA grant or loan funds has ceased attendance without notification during a payment period or period of enrollment. The requirement that an institution identify students that have dropped out of the institution during a payment period or period of enrollment is not new. Under the Title IV, HEA refund requirements an institution has been required to identify drop outs. Among other things, a reviewer may look to see if an institution has a mechanism in place for identifying and resolving instances where attendance through the end of the period could not be confirmed for a student. These regulations provide institutions with flexibility to establish their own add-drop periods and institutional refund policies. The basis for measuring the amount the student earns is the student's attendance, and the law requires that the funds be earned on a pro-rata basis through the 60 percent point of the payment period or period of enrollment.

Changes: None.

Student Does Not Return From an Approved Leave of Absence

Comments: A few commenters believed that, for a student who does not return from an approved leave of absence, the institution should be able to use the scheduled return date as the student's withdrawal date, rather than the date that the student began the leave of absence (for a student who withdraws from an institution that is not required to take attendance) or the last date of academic attendance as determined by the institution from its attendance records (for a student who withdraws from an institution that is required to take attendance). One commenter felt that the withdrawal date should be the date of the institution's determination of the student's withdrawal. One commenter contended that the law states that the student's withdrawal date is the date that the student withdrew; therefore, for a student who notifies the institution that he or she will not be returning to the institution, the date of the student's notification should be the withdrawal date.

A few commenters were concerned that the withdrawal date for a student who does not return at the expiration of an approved leave of absence as proposed in the NPRM would penalize students and institutions if the student was a Title IV, HEA program loan recipient. The commenters noted that if a student had been granted the full 180 days for an approved leave of absence, the student will have exhausted all of his or her grace period and will be required to begin repayment of the loan immediately, which would increase the likelihood that the student would default.

A couple of commenters contended that the proposed withdrawal date will not provide institutions with enough time to comply with the requirements for the treatment of Title IV, HEA program funds when a student withdraws within the required timeframes. One commenter noted that when a student does not return from an approved leave of absence, the institution would like the opportunity

to work with the student to properly prepare them for repayment.

Discussion: We do not agree with the commenters' suggested alternative withdrawal dates for a student who does not return from an approved leave of absence because we continue to believe that the date that best reflects the point when the student ceased academic attendance for this student is the date that the student began the leave of absence (for a student who withdraws from an institution that is not required to take attendance) or the last date of academic attendance as determined by the institution from its attendance records (for a student who withdraws from an institution that is required to take attendance).

Section 484B(a)(2)(B) of the HEA states that the withdrawal date for a student who does not return to the institution at the expiration of an approved leave of absence is the withdrawal date as determined in accordance with section 484B(c). However, section 484B(c) does not specifically address the circumstance of a student who does not return to the institution at the expiration of an approved leave of absence. Therefore, as noted in the NPRM, we have promulgated the withdrawal date that we believe best meets our goal to accurately reflects the point when the student ceased attendance by treating the start of the leave of absence as a withdrawal date documented by the institution.

We acknowledge that this withdrawal date will result in the exhaustion of some or all of a student's grace period for Title IV, HEA program loan recipients. We believe this is an appropriate result because the student was not in academic attendance for that period. However, we note that a student who has exhausted his or her grace period and is unable to begin repayment of a loan may apply for a deferment or forbearance of payment. Taking into account the concerns of the commenters, we believe that a student must be informed of the possible consequences of withdrawal on a loan grace period before he or she is granted an approved leave of absence. Therefore, we have changed these regulations to require an institution to provide information to a loan recipient prior to the granting of a leave of absence about the possible effects that the student's failure to return from the leave of absence may have on the student's loan repayment terms. These issues related to a student's Title IV, HEA program loan repayment status when the student does not return from an approved leave of absence are discussed in more detail in the *Analysis of Comments and Changes* for § 668.22(d).

We note that the timeframes and requirements for the handling of post-withdrawal disbursements, maintaining documentation of a student's withdrawal, and returning Title IV, HEA program funds for which the institution is responsible all begin as of the date of the institution's determination that the student withdrew, not as of the student's withdrawal date. Therefore, the withdrawal date for a student should have no effect on an institution's ability to meet these requirements and deadlines.

Changes: Section 668.22(d)(1) has been changed to provide that a leave of absence is not an approved leave of absence for purposes of the Title IV, HEA programs unless the institution explains at or prior to granting the leave of absence the effects that the student's failure to return from an approved leave of absence may have on the student loan repayment terms, including the exhaustion of some or all of the student's grace period.

Unapproved Leave of Absence

Comments: One commenter contended that there would never be any unapproved leaves of absence because a leave of absence would not be allowed unless it is approved by the institution. One commenter believed that a withdrawal that results because a student is granted an unapproved leave of absence should be treated as a withdrawal without official notification so that the student's withdrawal date would be the midpoint of the payment period or period of enrollment.

Discussion: We would like to make clear that an institution may grant a student for academic reasons a leave of absence that does not meet the conditions of these regulations for an "approved" leave of absence. However, this "unapproved" leave of absence must be treated as a withdrawal for Title IV, HEA purposes. We do not agree that a student who is granted an unapproved leave of absence should be treated as an unofficial withdrawal. An unofficial withdrawal is one where the institution has not received notice from the student that the student has ceased or will cease attending the institution. If an institution has granted a student an unapproved leave of absence, the institution would be aware of when the student will cease attendance. In keeping with our stated goal of identifying the date that most accurately reflects the point when the student ceased academic attendance, we have defined the withdrawal date for a student who takes an unapproved leave of absence at an institution that is not required to take attendance as the date that the institution determines that the student began the leave of absence. The withdrawal date at an institution that is required to take attendance is the last date of academic attendance as determined by the institution from its attendance records. We have also added a conforming change to define the date of the institution's determination that the student withdrew for a student who is granted an unapproved leave of absence as the first day of the student's leave of absence.

Changes: We have amended §§ 668.22(b)(1) and (c)(1)(vi) to specify the withdrawal date for a student who takes an unapproved leave of absence at an institution that is required to take attendance and at an institution that is not required to take attendance, respectively. We have added § 668.22(l)(3)(v) to define the date of the institution's determination that the student withdrew for a student who takes an unapproved leave of absence.

Rescission of Intent To Withdraw

Comments: A few commenters did not agree that the withdrawal date for a student who withdraws from an institution after rescinding an intent to withdraw should be the date that the student first provided notification to the institution or began the withdrawal process, unless the institution chooses to document a last date of attendance at an academically-related activity. A couple of commenters believed that an intent to withdraw that is rescinded is completely cancelled and cannot be referred to again. The commenters maintain that the appropriate withdrawal date would be the date that the student subsequently notifies the institution and actually withdraws. One commenter was unhappy about our insinuation that an institution may abuse this area. The commenter felt that the institution is being held responsible for the student's actions. A couple of the commenters contended that the original date of the student's notification was not an accurate withdrawal date because it does not take into account the additional charges that the student has incurred for the additional period of attendance. One commenter asserted that it would be difficult to get a written statement from the student that indicated that he or she will remain in attendance. One commenter believed that the proposed requirements for handling rescissions of withdrawal notices are too complicated and penalize the student for deciding to remain enrolled.

Discussion: We continue to believe that the appropriate withdrawal date for a student who does not complete the payment period or period of enrollment after rescinding his or her first notification of withdrawal is the date when the student first began the institution's withdrawal process or otherwise provided official notification to the institution. The Department is responsible for identifying and responding to areas of potential abuse to the Title IV, HEA programs in the development of regulations. The potential abuses that we identified in the NPRM were not addressed by the alternative withdrawal dates suggested by the commenters. We do not believe that this requirement is onerous because an institution may always use the last date of attendance at an academically-related activity to take into account attendance by the student subsequent to the student's first notification of withdrawal. For example, Dave notifies his institution of his intent to withdraw on January 5. On January 6, Dave notifies the institution that he has changed his mind and has decided to continue to attend the institution, and provides the required written statement to that effect. On February 15, Dave notifies the institution that he is withdrawing, and actually does. The institution has a record of an exam that Dave took on February 9. The institution may use February 9 as Dave's withdrawal date. If the institution could not or did not choose to document a last date of attendance at an academically-related activity for Dave (in this case, the record of the exam), his withdrawal date would be January 5, the date of Dave's original notification of his intent to withdraw, not February 15.

We do not believe that it will be unduly burdensome for an institution to obtain a statement from the student that he or she intends to remain in academic attendance for the remainder of the payment period or period of enrollment. Presumably, the institution is aware that the student has changed his or her mind about withdrawing because the student has contacted the institution to inform the institution that he or she has changed his or her mind and are not withdrawing. The institution may inform the student of the certification requirement at that time.

Changes: None.

Last Date of Attendance at an Academically-Related Activity

Comments: One commenter contended that the law makes no mention of a last date of attendance or academically-related activities, so the regulations should only use the language of the law which states that a later date documented by the institution may be used for a student who withdraws without notification to the institution. The commenter did not agree that the concept of using the last date of attendance at an academically-related activity is a longstanding one for the Title IV, HEA programs because it has never been included in previous laws and was only introduced in the regulations about eight years ago. One commenter requested clarification of the documentation required to verify a student's attendance at an academically-related activity. One commenter contended that using the last date of attendance at an academically-related activity is not a realistic option because it is difficult for an institution to track attendance.

Discussion: As stated in the preamble to the NPRM, the statute does not specifically allow an institution to use as a withdrawal date a student's last date of attendance at an academically-related activity, except in the case of a student who withdraws without providing notification (in which case the institution may use a date that is later than the midpoint of the period). However, we continue to believe that we have the discretion under the statute to promulgate regulations that permit an institution that is not required to take attendance to document a date other than the specified withdrawal dates if that date more accurately reflects the point when the student ceased academic attendance.

We note that the use of a last date of attendance at an academically-related activity has been a part of the guidance for the definition of a student's Title IV, HEA program withdrawal date for over eight years. We believe that this qualifies as longstanding Title IV, HEA program policy. Just as there is a wide variety in the types of educational programs offered by institutions, there appears to be a lot of variation in ways that institutions have been able to identify a last date of attendance at an academically-related activity. We believe that the guidance provided in the preamble to the NPRM is sufficient for an institution to determine how the institution should properly document a student's last date of attendance at an academically-related activity without being overly prescriptive. This flexibility permits institutions to control the process used to verify the student's attendance in these activities. We will continue to provide guidance in this area through Department publications to address specific concerns that are not addressed by this guidance.

Changes: None.

Acceptable Documentation

Comments: One commenter supported the position in the NPRM that acceptable documentation for a student's withdrawal date should not be specified in the regulations.

Discussion: None.

Changes: None.

Section 668.22(d) Approved Leaves of Absence

Comments: A few commenters supported the position in the NPRM that an institution would be allowed to grant more than one leave of absence to a student. In response to the Secretary's specific request for comment, commenters suggested the following additional categories of unforeseen circumstances that the commenters believe warrant the granting of more than one approved leave of absence: jury duty; incarceration; unexpected loss of child care; the need to care for children during the children's school breaks; changes in work schedules (for example, a part-time employee is required to work full-time for a few weeks); protection in cases of domestic abuse where a student has been forced to go into hiding; dependent care outside the parameters of the Family and Medical Leave Act of 1993 (FMLA) (no specifics provided); financial reasons; death or illness of a family member; student suffers injury or major illness; snow days; travel.

A few commenters believed that a list of circumstances could not address every unforeseen circumstance that should warrant an approved leave of absence. A couple of these commenters believed that institutions should have the discretion to grant an approved leave of absence, as long as the institution maintained the appropriate documentation. One commenter suggested limiting the number of leaves of absence to two, rather than defining all unforeseen circumstances. One commenter thought that unforeseen circumstances should be defined, but only two leaves of no more than 60 days each should be permitted for these reasons. One commenter felt that one leave of absence in a 12-month period is sufficient.

Discussion: We continue to believe that more than one leave of absence should only be granted for limited, well-documented circumstances due to unforeseen circumstances. As stated in the NPRM, we believe this interpretation is supported by the language of the statute, which refers to a student who takes "a" leave of absence from an institution. This interpretation also recognizes the fact

that it is often not in the best interest of a student to have multiple interruptions in their education.

We believe that jury duty, like military duty, is a circumstance that would warrant multiple leaves of absence. We believe that some of the circumstances suggested by the commenters, such as illness of a family member or an injury or major illness of the student, are adequately covered by the FMLA. We do not believe that the additional circumstances suggested by the commenters would warrant multiple leaves of absence, either because they are not unforeseen, are difficult to document, or are likely to be adequately addressed by one leave of absence. However, we recognize that some of these circumstances, as well as other circumstances that have not been identified by either the Department or the commenters, may force a student who would otherwise continue their education to withdraw. We believe that the institution is in the best position to determine if one additional leave of absence is necessary for unforeseen circumstances that are not specifically mentioned in the regulations. However, in keeping with our intention to limit interruptions to a student's education, we believe that this leave of absence should be limited to 30 days and can only be granted if a student has already been granted an approved leave of absence at the institution's discretion. Therefore, consistent with the NPRM, the regulations would not specify the circumstances that would warrant one leave of absence; rather, the institution would determine if the student's reason for requesting a single leave of absence is appropriate. An institution may grant subsequent leaves of absence if:

- The student's circumstances meet one of the following conditions for multiple leaves of absence: military reasons, circumstances covered by the FMLA, or jury duty, or
- For one additional leave of absence not to exceed 30 days, the institution determines that the additional leave of absence is necessary. This type of leave of absence would have to be subsequent to the granting of the single leave of absence that is granted at the institution's discretion.

In accordance with the statute, the total number of days of all leaves of absence cannot exceed 180 days in any 12-month period.

Changes: Section 668.22(d)(2) is amended to provide that for one additional leave of absence not to exceed 30 days, the institution may determine that the additional leave of absence is necessary due to unforeseen circumstances. This type of leave of absence would have to be subsequent to the granting of the single leave of absence. Section 668.22(d)(2) is amended to provide that jury duty is another circumstance, in addition to military reasons or circumstances covered by the FMLA, for which an institution may grant a student subsequent leaves of absence.

Comments: One commenter asked if leaves of absence granted for "military reasons" includes the National Guard.

Discussion: We believe that leaves of absence that are granted for military reasons include training and service requirements of the National Guard.

Changes: None.

Comments: One commenter noted that some of the circumstances covered by the Family and Medical Leave Act of 1993 (FMLA) are covered for a 12-month period. The commenter asked us to clarify the interplay of the 12-month period for FMLA with the 180 days restriction of leaves of absence.

Discussion: Two of the circumstances that are covered under the FMLA, birth and care of a child, and adoption or foster care placement, are covered for up to 12 months for purposes of the FMLA. For purposes of the Title IV, HEA programs, this means that a student may be granted an approved leave of absence for these circumstances, as long as (1) the entire leave of absence will occur sometime during this 12 month period of time, and (2) the total number of days of all leaves of absence for the student does not exceed 180 days in the 12-month period that began on the first day of the student's first leave of absence. For example, a student has a child who is born on February 1, 2000. The student has never taken an approved leave of absence before. The student may be granted an approved leave of absence for the birth of and/or care of the child for up to 180 days during the period of February 1, 2000 through February 1, 2001, 12 months from the birth of the child. If the student requests a subsequent leave of absence to care for the child that would begin on January 1, 2001, the leave of absence could be no longer than 31 days, because the circumstance that triggered the leave of absence would no longer be covered under the FMLA after February 1, 2001.

Changes: None.

Comments: One commenter believed that it was unreasonable to require that a student be permitted to complete the coursework begun before the leave of absence. Since a leave of absence can be up to 180 days, the commenter noted that this period of time exceeded the limits most institutions permit before having a grade of "incomplete" turn into a failing grade. The commenter suggested that it would be more consistent with existing academic requirements for the term 'coursework' to be changed to 'course of study or major'. One commenter suggested that the requirement to exclude periods of excused absences from the calendar days used in the return calculation does not work because any leave of absence that extended beyond the end of the payment period or period of enrollment would automatically qualify the student to earn 100 percent of the Title IV, HEA program funds.

Discussion: Approved leaves of absence are viewed as interruptions in a student's academic attendance. Therefore, when a student returns from a leave of absence, the student should be continuing the academic program where it left off. Approved leaves of absence must conform to the institution's policy, and institutions are expected to play an active role in evaluating whether a requested leave of absence should be granted and how it can be structured to permit a student to complete the payment period or period of enrollment. Although a leave of absence may extend for up to 180 days, we anticipate that most requests will be for shorter periods that will conform to an institution's requirements for completing courses within specified time limits. Furthermore, the scenario provided by the commenter is one where a student has not ceased to perform academically if the student is completing the course work through independent study rather than by taking classes at the institution. Therefore, this would not be considered a leave of absence for Title IV, HEA program purposes. When a student returns from an approved leave of absence the payment period or period of enrollment used for a return calculation would be adjusted to reflect the new ending date. In order to prevent a situation where a student is able to earn funds simply by taking a leave of absence, those days must be excluded from the return calculation.

Changes: None.

Comments: One commenter believed that retroactive requests for leaves of absence should be permitted because students often do not know that they will need a leave of absence until they have been absent from the institution for a few days.

Discussion: We continue to believe that it is reasonable to expect an institution to collect a written request for an approved leave of absence from the student prior to the leave of absence, unless the student is unable to provide the written request prior to the leave of

absence due to unforeseen circumstances. In such cases, the institution must document the reason for its decision to grant the leave of absence prior to receiving a written request and collect the written request from the student at a later date.

Changes: None.

In-School Status for Title IV Loans

Comments: Several commenters believed that a student should be considered to have in-school status for Title IV, HEA loan purposes during an approved leave of absence. The commenters argued that considering a student to have in-school status for Title IV, HEA loan purposes is consistent with the assertion that a student on an approved leave of absence is still considered to be enrolled at the institution. The commenters contended that the inconsistency of placing a student in an out-of-school status for loan purposes, while the student is still considered enrolled in the institution, would be too confusing and burdensome to students and their families, institutions, lenders, and guaranty agencies. Some commenters noted that leaves of absence are granted to encourage a student to continue his or her education. The commenters believed that guaranteeing that a student will not exhaust any or all of their grace period will be an added incentive to return and avoid immediate repayment. One commenter noted that most loan servicing systems generate letters to a borrower beginning in the first month of the borrower's grace period. The commenter contended that these notices will confuse students who are considered to be in enrollment for other Title IV, HEA purposes.

Discussion: We agree with the commenters' arguments that the inconsistency of treating a student on an approved leave of absence as a withdrawn student for purposes of terminating a student's in-school status would not be in the best interest of the student and would possibly create undue burden for institutions, lenders and guaranty agencies. We agree that a student who is granted an approved leave of absence should be considered to remain in an in-school status for Title IV, HEA loan repayment purposes. However, as discussed previously, if a student does not return from an approved leave of absence, the student's withdrawal date, and the beginning of the student's grace period, is the date that the student began the leave of absence (for a student who withdraws from an institution that is not required to take attendance) or the last date of academic attendance as determined by the institution from its attendance records (for a student who withdraws from an institution that is required to take attendance). Therefore, an institution must report to the loan holder the student's change in enrollment status as of the withdrawal date.

Changes: Section 668.22(d)(1) has been changed to reflect that if a Title IV, HEA program loan borrower has been granted an approved leave of absence, the borrower is considered to be enrolled in the institution for purposes of reporting the student's in-school status for Title IV, HEA program loans.

Scheduled Breaks

Comments: A few commenters supported the position that a student would not have to be granted an approved leave of absence for periods of nonattendance for a scheduled break. The commenters assumed that this position would apply to summer sessions when the student is not scheduled to be in attendance.

Discussion: The commenters are correct that an approved leave of absence would not be necessary for a summer session for which the student was not scheduled to be in attendance. However, if a scheduled break falls within a payment period or period of enrollment and the student does not return at the end of the scheduled break, the withdrawal date would reflect that the scheduled break was a period of non-attendance.

Changes: None.

§ 668.22(e) Calculation of the Amount of Title IV Assistance Earned by the Student

Use of Payment Period or Period of Enrollment

Comments: A few commenters suggested that institutions that use period of enrollment for the calculation should be allowed to use aid awarded rather than the aid that was disbursed or could have been disbursed as of the date of the student's withdrawal. The commenters said that the use of aid awarded was provided for in the law, and that the option of using period of enrollment is made void unless an institution is allowed to use the aid awarded in the calculation. The commenters explained that the proposed requirement to only use the amount of aid disbursed or that could have been disbursed at the time of the student's withdrawal is unfair because students who withdraw during the first payment period will not have been enrolled long enough for the institution to have disbursed all aid awarded for the period of enrollment. The commenters believe that institutions will be acting against the interests of their students by using the period of enrollment in the calculation rather than the payment period because less aid could be considered in the calculation.

Discussion: Although the commenters point out that the law refers to aid awarded when describing the institution's option to use either payment period or period of enrollment in the calculation, that reference simply describes the relevant period to use in the calculation. The law gives institutions the option to use either the payment period or period of enrollment "for which assistance was awarded" in the calculation, but specifies that the percentage of assistance earned is applied to the assistance that "was disbursed (and that could have been disbursed). . . as of the day the student withdrew".

Changes: None.

Comments: A small number of commenters pointed out that the requirement for an institution to consistently use either the payment period or period of enrollment measure poses a problem in some circumstances, particularly for students that are transferring to the institution or are re-entering to complete their program. Some of those commenters said that they read the law to allow institutions to choose on a student-by-student basis to address differences in student circumstances. The commenters noted that many institutions would decide to use the payment period as a basis for doing most return calculations, because that calculation would be better for most students. The commenters said that the choice in the law to use payment period or period of enrollment was supposed to give them flexibility to use a calculation that matched the way they charged for their programs.

Discussion: Institutions must choose between using payment period or period of enrollment on a program by program basis. This requirement promotes consistency in administration of the programs and makes it simpler for schools to explain the return of funds provision to students. Students enrolling in a program at an institution will also be subject to the same period of measure for return of unearned aid calculations throughout their attendance. We therefore reject the suggestion that institutions should be able to choose the appropriate period for this calculation on a student by student basis for the students that regularly enroll in their programs. Some different treatment is being permitted for

students that transfer into an institution or re-enter, and this is discussed below.

Changes: None.

Comments: A few commenters said that the proposed regulation is confusing because it does not distinguish between financial aid awarded (which is subject to the student meeting certain criteria to receive any amount awarded) and financial aid that the student was eligible to receive. The commenters illustrated this by explaining that a first time borrower must attend 30 days before being awarded the financial aid for the first loan disbursement. The student must then continue attending into the second payment period in order to receive the second disbursement of the loan proceeds. The commenters recommended revising the regulation to provide that the amount to be returned may never exceed the difference of the amount disbursed and the amount earned.

Discussion: The calculation in the NPRM determines whether more aid was actually disbursed than the student earned. If so, the unearned portion must be returned. The proposed language has already been written to clarify that the only amount that needs to be returned is the amount of aid that was actually disbursed that exceeded the amount of earned aid. We believe that the proposed language accurately describes the steps needed to perform the calculation, and believe that this language better describes the processes that institutions will use when performing these calculations.

Changes: None.

Comments: A few commenters asked how to determine tuition and fee costs to be paid in a payment period or period of enrollment when the program is longer than those periods. These commenters pointed out that some institutions charge for equipment and supplies up front, even though that equipment may be used throughout a program that could last for two years or perhaps longer. Other questions dealt with whether such charges could be pro-rated, and asked how registration fees or book charges would be handled in the calculation. The commenters suggested that deference should be given to the recommendations made by the schools and their students who are affected by this provision. Some of these commenters said that the Department has a longstanding policy to include up-front charges in the first period of enrollment so that there would be no tuition and fee costs for subsequent periods.

Discussion: An institution would be permitted to pro-rate the total program charges for the program to correspond to the payment period if the institution has elected to use payment period rather than period of enrollment for the return calculations. If the institution retained a higher amount of charges to the student for the payment period for any reason, including allocating costs for equipment and supplies to the front of the program, the funds retained by the institution are attributed to that payment period because they are a better measure of the institutional charges paid by the student for that period.

Changes: None.

Comments: A few commenters raised concerns about the statutory requirements of the return calculation. For example, one commenter argued that forcing institutions to return unearned Title IV, HEA program funds through 60 percent of the period could cause the institutions to delay disbursing funds to their students until after this point. Those schools pointed out that students that withdraw after the beginning of a payment period cannot be replaced, and the cost to the institution of providing that program does not decrease. Another commenter pointed out that his state required a shorter refund policy that the commenter believed was fairer than the return calculation. Other commenters complained about the additional costs institutions would face from adding additional staff and returning larger amounts of unearned funds. Other commenters objected to having students earn funds on a pro-rata basis because it does not correspond to the costs incurred by the student for attending the institution, and complained that the statutory formula does not round the percentages earned in 10 percent portions like the prior version of the law did.

Discussion: The commenters address components of the return calculation that are statutory and cannot be changed by regulation.

Changes: None.

Re-Entry and Transfer Students

Comments: Some institutions pointed out that it was impossible for an institution to use a consistent number of hours in a payment period for students that transferred into the institution or re-entered it, because the first payment period for those students will be whatever portion of a payment period remains to be completed before the student can begin a subsequent full payment period. A few commenters pointed out that the Title IV, HEA program funds at issue during this partial payment period are, in effect, discounted twice, once at entry, due to the Federal Pell Grant proration requirements, and once at the time of withdrawal for the return calculation. Other schools also complained that this problem was further complicated because institutions are not allowed to use aid awarded in the calculation. Another commenter noted that the benefit of using payment periods for the regularly enrolled students would be negated if the institution used payment periods for the transfer and re-entry students as well. The commenter believed that it may be fairer for those students to have their period of enrollment used in a return calculation.

Discussion: We acknowledge that students transferring to an institution or re-entering a nonstandard term or non-term based program are more likely to have a short, non-standard payment period that would have to be completed before their schedules could fit into the standard payment periods at the institution. Both these groups of students are distinct from students who have attended a program from the beginning of the payment period or period of enrollment, and it may be appropriate for an institution to choose to use either a payment period or period of enrollment basis for a return calculation for one of these groups of students, even if a different period is used for the students who have been in attendance from the beginning of the payment period or period of enrollment in that program.

Changes: Section 668.22(e)(5)(ii) has been modified to permit an institution to make a separate selection of payment period or period of enrollment for return of unearned aid calculations for students that transfer to the institution and for those who reenter the institution for students who attend a nonterm-based or a nonstandard term-based educational program.

Comments: A small number of commenters pointed out that the return calculation does not provide for treatment of aid that was awarded but not disbursed, including situations where the institution elects to do multiple disbursements. The commenters suggested that the multiple disbursements should not be treated as funds that would be applied to institutional charges, but that institutional charges should be applied against the amount the student and the institution must repay. Another commenter said that the return calculation does not adequately address how undisbursed funds should be treated because of the many different scenarios that can occur at a college where a student withdraws before

receiving all funds that have been disbursed to him.

Discussion: As discussed above, the law determines the amount of funds earned by the student in the return calculation by applying the percentage the student completed of the payment period or period of enrollment to the funds that were disbursed, or could have been disbursed, as of the day the student withdrew. Students that have not received aid that could have been disbursed to them at the time they withdrew are entitled to receive any additional sum earned that is greater than the amount already disbursed to them. This snapshot approach to considering whether additional aid may be awarded will provide a consistent set of procedures that will prevent post-withdrawal disbursements of unearned aid. Even though multiple disbursements may have been scheduled for a student at the time he or she withdrew, the return calculation will limit those disbursements to actual amounts earned. A student receiving a post-withdrawal disbursement will have earned all aid that had been disbursed, and the subsequent disbursement will only be for the additional amount earned. A student receiving a post-withdrawal disbursement will therefore never have any unearned funds that would be the responsibility of the student in the return calculation, as might be the case if all of the student's disbursements were made at the beginning of the period. This rule will prevent institutions from making post-withdrawal disbursements of aid that could be manipulated to alter the grant/loan mix of funds used in the return calculation. We believe it is consistent with the law to base the return calculation on the actual aid that had been disbursed at the time the student withdrew.

Changes: None.

§ 668.22(f) Percentage of Payment Period or Period of Enrollment Completed

Credit Hour Programs

Comments: Several commenters questioned how holidays and weekends should be treated in the calculation of days completed, particularly when combined with a short break. One commenter suggested that the calendar days used in the calculation should be defined as school days, and exclude weekends and holidays from the calculation. The commenter argued that this treatment would provide consistency among terms and would comport with the current method of determining repayments. Other commenters agreed that including weekends and short breaks complicates the calculation and does not accurately reflect the actual course completion. Conversely, other commenters pointed out that students are often studying during weekends and during short breaks, and they argued that all calendar days should count in the return calculation. Another commenter preferred basing the calculation on weeks completed, and suggested that some rounding of calendar days completed be permitted in order to simplify the calculation.

A few commenters argued that the proposed exclusion of 5 day breaks was too short if the weekend days would be considered a part of that period. The commenter noted that every break of 3 days or more occurring prior to or after a weekend would create a period that would be excluded from the return calculation, and recommended that the number of days of closure be increased to more accurately reflect the expenses incurred by the institution during short-term closure. One commenter pointed out that most colleges have a one week Spring break in the Spring term, but only one-day or two-day holidays in the Fall even though the number of teaching days are the same. The commenter believed that this disparity in breaks would require students withdrawing in the Spring to have to return more funds than students that withdraw at a comparable point in the Fall payment period.

Discussion: The law generally requires the use of calendar days in the return calculation. The proposed rule would exclude breaks of five or more consecutive days in order to provide for more equitable treatment to students that withdraw near each end of a scheduled break. In those instances, the student that withdrew after the break would not be given credit for earning an additional week of funds during the scheduled break, but would instead earn only an additional day or two more funds than a student that withdrew right before the start of the break. We intend for institutions to exclude all days between the last scheduled day of classes before a scheduled break and the first day that classes resume. For example, where classes end on a Friday and do not resume until Monday following a one-week break, both weekends would be excluded from the return calculation. If classes were taught on either weekend for the programs that were subject to the scheduled break, those days would be counted.

Changes: None. Comments: One commenter pointed out that the proposed regulation does not fully address non-term credit hour programs and nontraditional program formats, especially those non-term credit hour programs that consist of consecutive courses where students may be scheduled to attend one or two days a week or every other weekend. In those instances, five or more days would routinely occur between class meetings, and the commenter asked if those days would be treated as scheduled breaks. Another comment suggested that we should continue to work with the financial aid community to identify the best way to measure the period used in the return calculation for these non-traditional programs.

Discussion: We note that the proposed rule excludes scheduled breaks of at least five consecutive days. For a program that regularly met each weekend for its entirety, the days between classes would not be excluded because they were not part of any regularly scheduled break. If classes were not held on at least one of the scheduled days during a weekend, the period from the last scheduled day of class before the scheduled break until the next scheduled day of class after the break would be excluded from the return calculation. We believe that this result is consistent with the application of this rule to traditional institutions, since a program that usually offered classes on Saturday and Sunday would be taking a break from half of a week's classes if it did not meet on one of those days.

Changes: None.

Clock Hour Programs

Comments: One commenter said that the proposed regulations for clock hour institutions were too complex. A few commenters argued that the return calculations for clock hour institutions should use scheduled clock hours to determine the amount of aid earned rather than considering the actual clock hours completed in the program, because this is more consistent with the requirement to use calendar days as the measure of aid earned at credit hour institutions. Other commenters argued that the law was intended to create similarity between rules for credit hour and clock hour institutions by permitting the use of scheduled hours. These commenters pointed out that credit hour students can attend the first day of classes and not again until the 30th day and receive aid for that 30-day enrollment if they withdraw. Furthermore, if the student unofficially withdrew, he would receive aid through the midpoint of the payment period.

A small number of commenters also argued that the proposed regulations did

not correctly interpret the law concerning when scheduled clock hours are used instead of completed clock hours. These commenters believe the law permits the Secretary to establish a threshold of minimum hours such as 10 percent of the payment period that, when completed, would entitle a student to be paid for scheduled hours from that point on whenever he or she withdraws.

Other commenters recommended a number lower than 70 be used for the percentage of completed hours that would allow a student to be paid for scheduled hours, or argued that it was punitive to limit some students to being paid for completed hours if they only completed 69 percent of the hours they were scheduled to take when a student completing 70 percent would get the bonus of being paid for all scheduled hours. A few commenters also suggested that the 70 percent number be changed to 66 percent in order to correspond with our satisfactory academic progress measures that require a student to complete a program in no more than 150 percent of the scheduled time, so that a student could be paid for up to 150 percent of the actual hours completed at the time of withdrawal.

Discussion: The law provides clear authority for the Secretary to establish the percentage of attendance a student must achieve in order to be paid for scheduled hours rather than completed hours. Under the new regulation, that measure will be based upon the student's success at completing at least 70 percent of the hours scheduled to be completed at the time he or she withdrew. The 70 percent requirement is a bright line, and students that meet the attendance threshold will be paid for scheduled hours, while students with lower attendance rates will not. The 70 percent attendance requirement was reached after numerous meetings with a work group that were held during the negotiated rulemaking process. We reject the suggestion that the number be lowered in order to mirror our satisfactory academic progress provisions, which serve the very different purpose of providing students that remain enrolled beyond the scheduled length of their program with additional time to complete their studies.

Changes: None.

Comments: A few commenters objected to the proposed requirement that a student in a clock hour program actually complete 60 percent of the program before earning 100 percent of the funds. The commenters argued that the 60 percent measure identified in the law should be based on the student's scheduled hours if the student were entitled to be paid for scheduled hours, as discussed above. The commenters said that there is no specific statutory basis for imposing this restriction, and they asserted that it discriminates against clock hour students because no comparable restrictions are imposed on students enrolled in credit hour programs. One commenter pointed out that some states approve clock hour programs that permit students to attend with accelerated schedules, so that a student would withdraw with more completed hours than scheduled. The commenter sought either clarification or a change in language to provide that a student could be paid for completed hours if they exceeded the amount of scheduled hours.

Discussion: The law permits a student to earn 100 percent of the funds when completing 60 percent of a program, and we view the actual completion of that amount of the program as a substantive requirement. We refuse to dilute this measure by treating a student that completes 42 percent (70 percent of 60 percent) of a program as having earned 100 percent of his or her Title IV, HEA program aid. We note that the student completing 42 percent of the program in this example will still get the substantial benefit of having earned aid for 60 percent of the scheduled hours because the student met the 70 percent attendance requirement when he withdrew. We note that the language in the regulation permits the institution to use either the hours completed or the scheduled hours (subject to the 70 percent attendance requirement) in the calculation, so that a student completing more hours than were scheduled to be completed at the time he or she withdrew could be paid for the completed hours.

Changes: None.

Excused Absences

Comments: Many commenters suggested that excused absences should be treated as completed hours, because we currently permit clock hour institutions to count up to 10 percent of the missed hours in the program as completed hours. The commenters noted that this was also consistent with higher education community practice.

A few commenters further suggested that the 10 percent limit on excused absences should be raised to 15 percent or whatever standard was permitted in state regulations. Some commenters also suggested that excused absences should include jury duty, military service, court appearances, sickness, medical reasons and family emergencies since these are all circumstances beyond the student's control.

One commenter claimed that not counting excused absences as completed hours would create potential problems for transfer students and re-entry students because the state would recognize hours for excused absences as completed even though the Department would not. Other commenters said it was not fair to exclude excused absences from being treated as completed hours because credit hour institutions are allowed to count weekends and holidays in the return calculation.

One commenter supported the proposed regulation because the 70 percent completion measure used to permit students to be paid for scheduled hours rather than completed hours would already include these absences.

Discussion: Excused absences will not count as completed hours in the return calculation. For students that withdraw from their programs, the absences will be classified as scheduled hours that were not completed. In order to be paid for those hours, the student must satisfy the 70 percent attendance measure. We believe that the allowance of up to 30 percent of the scheduled hours to be missed is sufficient to cover most of the situations for unexpected absences that were posed by the commenters. We also note that some of the suggestions for reasons to recognize excused absences would appear to come within the criteria an institution could use to give a student a leave of absence. For students that do not withdraw from their programs, the existing policy in the cash management regulations, § 668.164(b)(3), of not requiring clock hours to be completed for excused absences of up to 10 percent of the program will be retained.

Changes: None.

Rounding

Comments: Some commenters pointed out that there was no mention of rounding the numbers used in the return calculation, and they requested guidance.

Discussion: The return calculation should use the following rounding procedures. Use three decimal places for most steps in the calculation, rounding the third decimal place up one if the fourth decimal place is 5 or above. For example, .4486 would be rounded to .449, or 44.9 percent. There is one exception to this general rule. Monetary amounts may be reported in dollars and cents using normal rounding rules to round to the nearest penny. Final repayment amounts that the institution and student are each responsible to

return may be rounded to the nearest dollar.

Changes: None.

Section 668.22(g) Return of Unearned Aid, Responsibility of the Institution

Comments: A few commenters believed that it was unduly financially burdensome to hold an institution responsible for repaying Title IV, HEA program funds that were disbursed directly to the student. The commenters contended that the assumption of the proposed rules that an institution has retained Title IV, HEA program funds to cover institutional charges before disbursing any Title IV, HEA program funds to the student is incorrect.

A few commenters argued that it would be unfair to include institutional charges that are paid by other sources of aid that are restricted to institutional charges—such as State funding programs, State grant programs or veteran's grants—in the amount of institutional charges that is used for purposes of determining the portion of unearned Title IV, HEA program funds that the institution must return. One commenter noted that in the case of restricted funding, when a student withdraws, the institution will have to refund a portion of the aid to the other source. The commenter believed that it would be financially burdensome for the institution to have to also return funds for the same institutional charges to the Title IV, HEA programs. A few of the commenters contended that if the amount of restricted aid was removed from the amount of institutional charges, the student would be able to repay the same amount under the more beneficial repayment terms of a Title IV, HEA program loan.

A few commenters contended that an institution would have to take undesirable actions to mitigate their financial loss. A few of these commenters maintained that an institution will have to pass on the bill to the student for the amount of Title IV, HEA program funds that the institution had to return in excess of the Title IV, HEA program funds that were actually received by the institution. A few commenters maintained that an institution will have to change its refund policy so that the institution will earn more institutional charges when a student withdraws. A few commenters asserted that institutions will have to delay some loan disbursements to avoid having to repay Title IV, HEA program funds they never received. One commenter, a state community college trustees association, believed that requiring institutions to return Title IV, HEA program funds that were given to the student will force the community colleges in the commenters State to discourage thousands of students from enrolling if they believe that the student may not complete the term. The commenter believed that state community college enrollment could be reduced by more than 10 percent.

A few commenters contended that institutions with low or no institutional charges, such as many community colleges, should be exempt from the requirement that the institution return Title IV, HEA program funds that it has not received because of the enormous negative effects that this provision would have on these institutions and their students.

A couple of the commenters believed that there should be an exemption for institutions like those in the California community college system, when institutional charges are paid or waived by a State program. The commenters asserted that because Title IV, HEA program funds are never used to pay the fees for these students, it would be unfair to require the institution to return Title IV, HEA program funds that were never received by the institution to cover these fees. The commenter noted that any funds returned by the institution will come at the expense of other programs or services to students.

A few of the commenters maintained that students at low- or no-cost institutions will be the hardest hit by this provision. The commenters noted that the students who enroll at these institutions have the greatest chance of owing a large overpayment because the amount of Title IV, HEA program funds that the institution will be responsible for returning—which is capped at the lesser of the total unearned amount of aid or the student's institutional charges multiplied by the percentage of unearned Title IV, HEA program assistance—will be quite small.

Discussion: We do not agree with the suggestion that these regulations should take into consideration whether other sources of aid were actually used to pay a student's institutional charges when allocating repayment responsibilities between the institution and the student. The proposed regulation implements the statutory framework that divides responsibility for repaying unearned Title IV, HEA program funds between the institution and the student under a new system that no longer controls the actual charges assessed by the institution. In the statute, the allocation of repayment responsibilities looks first to the institution to repay unearned Title IV, HEA program funds because the Title IV, HEA program funds are provided under the presumption embodied in the current regulations that they are used to pay institutional charges ahead of all other sources of aid. The regulations do not provide for institutions to adjust this allocation by taking into consideration other sources of aid that might be used to pay institutional charges for a student. We believe that it would be administratively burdensome to try and take into consideration when other sources of aid would be deemed to have paid some portion of institutional costs for a student, particularly given the variations in timing and conditions that may be associated with those sources of aid.

The commenters noted that institutions will have to change their institutional refund policies to adjust to the new provisions. The new provisions of section 484B of the HEA for the return of unearned Title IV, HEA program funds have freed institutions to make such changes. The law requires institutions to disclose and explain their refund policies to students, and this should include some discussion of how the institution might adjust a student's charges to take into account repayments that the institution was required to make under these provisions. As noted by some commenters, institutions may also consider changing the disbursement schedules for students in order to have the disbursements better match the rate at which the student is earning the funds.

In response to the predictions by some commenters that some community colleges may discourage enrollments by students that are less likely to complete the term, we note that many options are available to institutions to screen their applicants and actively work with them to keep them enrolled. An institution should only admit students who have an intention of completing the program in which they enroll. Institutions should inform students of their responsibilities under these rules to repay unearned funds if they withdraw.

The law does not permit exemptions of any institutions that are participating in the Title IV, HEA grant or loan programs from the requirements of section 484B, as implemented by these final regulations. We note that institutions may instead waive the institutional charges for their students rather than paying them state scholarships, provided that the waiver of those fees is taken into consideration when calculating the student's cost of attendance. This would result in no institutional responsibility for repayment of unearned Title IV, HEA program funds because there would be no institutional charges. As pointed out

by the commenters, the students receiving the largest grant payments for living expenses are the students most likely to have a large grant overpayment if they withdraw from the program. These students are also, therefore, the ones that will derive the largest benefit from having 50 percent of their grant overpayment eliminated under the return calculation. In addition, we have developed repayment terms for overpayments of Title IV, HEA grants that we believe will mitigate some of the possible negative effects of these requirements on students. Institutions that are particularly concerned about the impact of these provisions on their students may wish to consider alternative disbursement schedules or at least making additional disclosures to students at the time the grant funds are disbursed to them.

Changes: None.

Comments: Commenters asked for clarification of, and suggested a few changes to, the guidance in effect on the definition of institutional charges. One commenter encouraged us to continue to include the financial aid community in any revision efforts. One commenter suggested that institutions be permitted to define institutional charges based on the regulatory language proposed in the NPRM.

Discussion: As stated in the preamble to the NPRM, we will revisit the current guidance of the January 7, 1999 policy bulletin on the definition of institutional charges to determine if revisions would be appropriate given the changes to section 484B of the HEA. We will take into account the comments received in response to the NPRM as part of a larger effort to include the financial aid community in the evaluation of the current guidance. Until further guidance is issued, the guidance of the January 7, 1999 policy bulletin remains in effect.

Changes: None.

Comments: A few commenters believed that "institutional charges incurred by the student" should be the institutional charges for which the student is held responsible by the institution at the time the student withdrew. The commenters maintain that this definition will take into account revisions to a student's institutional charges based on changes in the student's enrollment status or in the number of classes in which the student is enrolled. One commenter explained that some institutions will assess housing charges throughout the payment period, and that the institutions do not withhold Title IV, HEA program funds to pay those costs. The commenter suggested that, in this situation, the institution's repayment responsibilities should only consider the initial charges that were assessed to the student because the subsequent housing charges were paid by the student throughout the payment period. A student that withdrew could, therefore, cause the institution to repay institutional charges that had never actually been collected from the student.

One commenter asked which amounts of Title IV, HEA program funds would be used in the calculation of earned aid, the original amounts or the net amounts after an institution adjusts the student's aid because of an enrollment change. One commenter believed that aid received to pay for tuition, fees, and books, should be considered fully earned by the institution on the day that the institution no longer considers students eligible for refunds. One commenter questioned whether Federal Work-Study funds that are credited to a student's account for institutional charges would be included in determining the amount of Title IV, HEA program assistance retained for institutional charges. One commenter questioned whether Title IV, HEA program aid retained by the institution as of the withdrawal date must be considered in determining the amount of Title IV, HEA program assistance retained for institutional charges for a non-term program where the institution chooses to calculate the treatment of Title IV, HEA program funds when a student withdraws using the payment period basis, but institutional charges are for a longer period, or only the Title IV, HEA program aid that is retained by the institution to cover the charges the institution imposed under its refund policy as of the student's withdrawal date.

Discussion: We do not agree that the return calculation should be based upon the student's enrollment status at the time of withdrawal, or reduced to reflect whatever adjusted institutional charges were assessed by the institution after the student withdrew. The allocation of repayment responsibilities is based upon the institutional charges that were initially assessed. Unless the institution had processed a change in enrollment status for a student prior to his or her withdrawal and made any attendant changes in the amount of institutional charges at that point, the institution would be required to use in the return calculation the charges that were initially assessed to the student. While we understand that the actual charging practices at some institutions may not conform to the standard practice of assessing all charges to the student for the payment period, we believe that it would not be feasible to create exceptions because of the potential for abuse. Since the Title IV, HEA program funds are provided to the student for the entire payment period or the period of enrollment, it follows that repaying the unearned institutional charges assessed throughout that period should be deemed to be the responsibility of the institution.

Since the basis for earning Title IV, HEA program funds is the time that the student was in attendance at the institution, the time periods covered by the institution's refund policy are not taken into consideration. For that reason, there is no separate measure used to determine when a student has earned specific amounts of funds for particular charges. The institution's refund policy will govern what charges a student may owe after withdrawing, but that policy will not affect the amount of aid the student has earned under the return calculation. An institution's refund policy is also not taken into consideration for establishing the repayment obligations of the institution and the student. Furthermore, we note that the institution's refund policy is not required to take into consideration the formula in the return calculation when establishing whether the student owes any funds to the institution.

The return calculation does not take into consideration the individual requirements of an institution's refund policy. The repayment responsibilities for the Title IV, HEA program aid is allocated between the institution and the student based upon the total institutional charges that were initially assessed to the student.

Because Federal Work-Study funds are not included in the calculation of earned Title IV, HEA program funds when a student withdraws, Federal Work-Study funds that are credited to a student's account would not be included as Title IV, HEA program assistance retained for institutional charges.

Section 668.22(h) Return of Unearned Aid, Responsibility of the Student

General

Comments: Several commenters were concerned about the financial burden and the consequences of that burden that the proposed rules would place on students and institutions. The commenters contended that the proposed rules will result in the availability of less Title IV, HEA funds for a withdrawn student than under former provisions of section 484B of the

HEA. As a result, the commenters maintained that in many cases, students will owe both the institution (for unpaid institutional charges under the institution's refund policy) and the Title IV, HEA programs (for the return of unearned Title IV, HEA program funds).

The commenters noted that many of these students will have limited funds to make these payments and will have to choose whether to pay the institution or the Title IV, HEA programs. The commenters contended that, either way, a student will not be able to re-enroll in the institution or attend another institution, either because the student chooses to pay the institution rather than the Title IV, HEA programs and defaults on their Title IV, HEA program loans thereby losing eligibility for additional Title IV, HEA program funds, or because the student chooses to pay the Title IV, HEA programs rather than the institution, thereby being denied the opportunity to re-enroll or obtain transcripts to attend another institution. A couple of commenters believed that because students would not be able to re-enroll and complete their education, the institution will lose its relationship with employers in the community because the institution will not be able to provide employers with qualified candidates.

A few commenters suggested that institutions be permitted to change the way that they disburse Title IV, HEA program funds so that the institution can lessen or eliminate the occurrence of grant or loan repayment for a student. For example, one commenter suggested that, to decrease the chance of a student owing a repayment of Title IV, HEA program funds, an institution should be permitted to disburse Title IV, HEA program funds as the aid is earned in accordance with the schedule for determining the amount of aid a student has earned upon withdrawal. One commenter suggested that an institution be permitted to establish disbursement dates based on withdrawal patterns at the institution.

One commenter argued that the return calculation will encourage students to borrow to avoid possible grant overpayments if they withdraw, and another commenter said that the return of unearned Title IV, HEA program funds under the proposed rules did not provide for equitable treatment for students receiving Title IV, HEA program funding compared to students that did not receive such funding. The commenters also reasoned that, because students will have less Title IV, HEA program funds to cover the institutional charges that the students will owe the institution under the institution's refund policy, the institution will be forced to increase costs for all students. One commenter believed that an institution should be allowed to pay the amount the student is responsible for returning to the Title IV, HEA programs and then be allowed to bill the student. A couple of the commenters believed that an institution could not resolve a debt owed by a student that is difficult or impossible to collect by writing-off the debt because the institution would be considered fiscally irresponsible under the 90/10 rules and other regulations if they did not pursue payment.

Many of the commenters believed that many, if not all, of the negative effects delineated here could be mitigated by requiring a student to return 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed to the student.

Discussion: The commenters are correct that these new statutory provisions may result in more aid being returned to the Title IV, HEA programs. The difference will be primarily due to the absence of rounding in 10 percent segments as done under the prior pro-rata refund provisions, and to the use of the same refund formula for successive payment periods rather than switching to a different schedule that permits institutions to earn Title IV, HEA program funds faster. It will be incumbent upon institutions to work closely with their students to ensure that they understand their responsibilities for earning the aid being provided for the payment period or period of enrollment.

Other steps can also be taken to minimize the potential hardships to students that withdraw. We note that institutions already have some flexibility in holding back some portion of disbursements of Title IV, HEA program funds if they work with the student to set up a budget. For example, an institution may disburse Federal Pell Grant program funds at such times and in such installments as it determines will best meet the student's needs. We believe that this flexibility permits an institution to tailor Title IV, HEA program disbursements to meet the circumstances of the institution's student body. Institutions will also be able to work with a student that owes a grant repayment in order to preserve the student's eligibility for additional Title IV, HEA program funds, or the student may also enter into a repayment agreement with the Department. These flexibilities provide institutions and students with opportunities to either avoid substantial repayment obligations or to minimize the impact of the repayment burden when a student withdraws.

We question the statement that students may minimize their exposure to grant overpayments by increasing their borrowing. In some instances, such borrowing could actually increase the amount of a grant overpayment if the institution is responsible for returning funds toward the student's Title IV, HEA loan, leaving the student with the entire Title IV, HEA grant repayment. Situations where a grant overpayment is required are also instances where a direct benefit was conferred upon the student because half of the repayment amount is forgiven. Under these scenarios, it is not clear how there is any disfavorable treatment of a Title IV, HEA program funds recipient when compared to a student that does not receive Title IV, HEA program funds. We also note that the impact of these new rules will vary among institutions based upon the relative numbers of students that withdraw and the points at which those withdrawals occur, as well as the relative ability of their students to repay the institutions for amounts owed under the institution's refund policies. Institutions will, over time, adjust to these new rules by changing their policies, by working more closely with their students that are considering withdrawing, and by adjusting their charges.

As requested by a commenter, we note that an institution may repay a Title IV, HEA program grant overpayment on a student's behalf and collect the debt from the student. The student will no longer be considered to owe an overpayment and will be eligible for Title IV, HEA program funds provided that all other eligibility requirements are met. An institution that repaid a grant overpayment and then forgave the student's debt to the institution would not be considered fiscally irresponsible under the 90/10 rule or other regulations. The 90/10 rule, which requires that an institution may derive no more than 90 percent of its revenues from the Title IV, HEA programs, does not require an institution to pursue payment of debts. However, if an institution does not collect a student debt for institutional charges, the institution may not include the amount of the debt as non-federal revenue in its 90/10 calculations.

The commenters' belief that the negative effects could be mitigated by requiring a student to return 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed is discussed in detail in the *Analysis of Comments and Changes*

for the "Grant Overpayments" portion of § 668.22(h).

Changes: None.

Grant Overpayments

Comments: Several commenters believed that Title IV, HEA grant overpayment amounts should be minimized as much as possible. To this end, many of these commenters supported the non-federal negotiators' interpretation of the law that the statute should be read to relieve the student of 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed to the student, rather than the Secretary's interpretation of the statute that would provide that a student does not have to repay 50 percent of the student's grant repayment amount. A few commenters believe that 50 percent of a student's Pell Grant funds should be protected up-front and not included at all in the calculation of earned aid.

The commenters opposed the Secretary's position for the following reasons:

- Grant recipients, who are the students who are least able to repay an overpayment, will lose eligibility for future Title IV, HEA program aid if they do not repay the grant. A loss of Title IV, HEA program eligibility will prevent these students from re-enrolling in a postsecondary institution because they will not have the financial resources to do so. This will deny education to the people who need it most.
- Disadvantaged students will be discouraged from enrolling. They will not want to risk assuming an overpayment if they are forced to withdraw for reasons beyond their control.
- Grant recipients will be prevented from transferring to another postsecondary institution that may better meet their needs.
- Defaults will increase. Students will be forced to take out Title IV, HEA program loans to avoid possible Title IV, HEA grant overpayments if they withdraw. Many of the students will not have the resources to repay the loans and will default. The same will be true for students who owe both a grant overpayment and a loan debt and do not have the resources to satisfy both. A student may also owe the institution under the institution's refund policy, further limiting the student's ability to repay a loan.
- Up-front costs are not sufficiently acknowledged.
- The proposed rules are punitive to students who withdraw from an institution, regardless of the reason. The implication that Title IV, HEA grant recipients are trying to take advantage of the Title IV, HEA programs is unfounded. Our position is not in line with stated goal for negotiated rulemaking which is, "to develop policies that promote opportunity with responsibility."
- Our position undercuts the intent of the Pell Grant program, which is to give financially disadvantaged students the opportunity to succeed. The Pell Grant Program is an incentive program, an access program and a second chance program.
- Students at low-cost institutions would be the hardest hit because most of a student's Title IV, HEA grant funds are given directly to student.
- Every Title IV, HEA grant recipient who withdraws should not have a grant overpayment, as our position would require. Although a Title IV, HEA grant recipient who withdraws should not be considered to have completely earned the funds, the amount of the student's overpayment should be minimized as much as possible.
- Society will be impacted negatively. There will be a greater need for social programs for the students who are not able to continue their education because of a loss of Title IV, HEA program eligibility. The number of educated citizens to fill technical jobs will decrease.

A few commenters specifically argued that the statute can be read to support the nonfederal negotiators' interpretation. Some maintained that the statutory language is ambiguous. One commenter asserted that the phrase "that is the responsibility of the student to repay" refers to the grant programs to which repayments must be attributed, and it does not limit the 50 percent discount to 50 percent of the student's grant repayment amount. A few commenters noted that other similar aid recipients, such as scholarship recipients, are not asked to return any aid funds upon withdrawal. Some of these commenters asserted that monthly social security payments are not repaid if a recipient does not live out the entire month for which the payment has been received. The commenters noted that other entitlement aid sources recognize that the aid generally only funds a small portion of the expenses for which they are intended. A few commenters noted that the requirements for students to maintain satisfactory academic progress has safeguards to prevent students from abusing Title IV, HEA program funds through frequent withdrawals, because students not maintaining satisfactory academic progress will lose eligibility for Title IV, HEA program funds. A few commenters asked how to treat a situation where a grant repayment is owed and the student has a credit balance on his or her account, including whether a student would get the full benefit of a 50 percent reduction in the repayment amount in those circumstances.

Some commenters requested changes to the existing repayment terms for students who owe a grant overpayment to ensure that students who cannot repay remain eligible for additional Title IV, HEA program funds. The commenters made the following points:

- It is inequitable to allow a student to repay loan funds under the terms of a promissory note, but insist on repayment of a grant overpayment under more immediate and punitive terms.
- We should provide terms that are similar to loan repayment terms, such as a grace period, periods of deferment and forbearance, and the ability to repay over a longer period of time.
- The institutional collection effort would be too burdensome and costly to an institution. An institution should not have to collect Title IV, HEA program overpayments for us.
- We should consider community service as an alternative to repayment of an overpayment.

Several commenters requested clarification of the applicable requirements for repaying a Title IV, HEA grant overpayment. Specifically, the commenters wanted to know how long a student will lose eligibility if he or she owes an overpayment. One commenter urged us to not overregulate the repayment process and let institutions work with students to provide satisfactory repayment arrangements.

Discussion: We continue to believe that 50 percent of the student's grant repayment amount provides the level of relief to the student that the statute intended, while it requires a student to return a portion of the unearned grant assistance. As stated in the preamble to the NPRM, we believe that the conference report language for the 1998 Amendments supports this interpretation.

We note that the difference in position between the commenters and the Secretary for purposes of the proposed rules is limited to the question of how much grant overpayment should be forgiven, with the Secretary proposing to forgive half of the grant repayment amount rather than half of the total grant amount the student received. The suggestions from commenters arguing against holding students accountable for making any grant repayments are not permitted under the law. To the extent that the law could be read to support either position, we believe that we have adopted the better reading. We also note that the proposal to discount by half the amount of any grant repayment is simpler to explain to students and consistent with the principle that the repayment is a shared responsibility.

The commenters suggestion to reduce grant overpayments by half of the total grant amounts would instead create a fixed amount of grant funds that the student was never required to earn, regardless of when the student withdrew. For example, a student who

was disbursed or could have been disbursed $2,000 in Title IV, HEA grant funds would be given $1,000 of the grant funds in addition to whatever amounts were earned regardless of whether he or she withdrew after 5 days of attendance or 25 days.

In response to the observation from commenters that other sources of aid are not subject to repayment requirements, such as scholarships or monthly social security benefits, the statutory basis for this grant repayment requirement distinguishes it from those programs.

We note that the requirements for students to maintain satisfactory academic progress further the goals of the Title IV, HEA programs by establishing maximum timeframes for students to complete their program, but these requirements do not replace the proposed repayment structure that is designed to allow students to earn over time the aid provided for a payment period or period of enrollment.

When a student owes a grant overpayment and there are funds available on the student's account as a credit balance, the institution would be expected to use those funds to apply toward repaying the student's grant overpayment. The actual amount of the grant repayment would still be determined under the return calculation by applying the 50 percent discount to the amount of unearned grant funds. Any funds left as a credit balance after satisfying the grant repayment would be handled in accordance with Subpart K-Cash Management of the Student Assistance General Provisions regulations.

We agree with the commenters who suggest that we revise the existing repayment terms for students who owe a grant overpayment to ensure that students who cannot repay have the opportunity to continue their eligibility for Title IV, HEA program funds. Under changes that are included in these final regulations, a student who owes an overpayment as a result of withdrawal will retain his or her eligibility for Title IV, HEA program funds for 45 days from the earlier of the date the institution sends a notification to the student of the overpayment, or the date the institution was required to notify the student of the overpayment. During those 45 days, the student will have the opportunity to take action that can continue his or her eligibility for Title IV, HEA program funds. A student may do this in one of three ways: (1) the student may repay the overpayment in full to the institution, (2) the student may sign a repayment agreement with the institution, or (3) the student may sign a repayment agreement with the Department. If a student does not take one of these three actions during the 45 day period, the student becomes ineligible for Title IV, HEA program funds on the 46th day from the earlier of the date that the institution sends a notification to the student of the overpayment, or the date the institution was required to notify the student of the overpayment. The student will remain ineligible until the student enters into a repayment agreement with the Department that re-establishes the student's eligibility.

We are sensitive to the concerns of some commenters that collection on behalf of the Department may be unduly burdensome and costly to the institution. We note that an institution is never required to enter into a repayment agreement with a student, and may refer an overpayment to the Department at any time after the student has had the opportunity to pay off the overpayment in full to the institution or sign an agreement with the Department. Because we are concerned with an institution's ability to continue to track a student to obtain payment, these final regulations provide that an institution's repayment arrangement must provide for repayment of the entire overpayment within two years of the date of the institution's determination that the student withdrew. Any amount of the overpayment that remains at the end of the two years must be referred to the Department. Other times that an institution *must* refer an overpayment to the Department are: (1) If the student did not satisfy any of the required actions for extending his or her eligibility during the 45 day period; and (2) if at any time a student does not meet the requirements of his or her repayment agreement with the institution.

A student who wishes to sign a repayment agreement with the Department will do so by contacting the Department directly. We acknowledge that an institution may not know if a student chooses to sign a repayment agreement with the Department within the 45 days. Therefore, if a student does not repay the overpayment in full to the institution or sign a repayment agreement with the institution within the 45 days, when the institution refers the overpayment to the Department, it must report the overpayment to the National Student Loan Data System (NSLDS) as a referred overpayment (an institution can refer to Dear Colleague Letter GEN–98–14 for more information on reporting overpayment information to NSLDS). We will check to see if the student signed an agreement with the Department and report the final status of the overpayment to NSLDS.

A repayment agreement with the Department will include terms that permit the student to repay the overpayment while maintaining his or her eligibility for Title IV, HEA program funds. We will seek to develop terms that will include a grace period and are sensitive to a student's financial situation. We encourage institutions that choose to enter repayment agreements with students to do the same.

We would like to stress that any overpayment resulting from a student's withdrawal remains an overpayment until the overpayment is repaid in full. We will provide further guidance on the repayment of overpayments through appropriate Department publications.

Changes: Section 668.22(h)(4) has been revised to provide repayment terms for students who owe a grant overpayment to ensure that students who cannot repay have the opportunity to continue their eligibility for Title IV, HEA program funds.

Section 668.22(j) Timeframe for the Return of Title IV, HEA Program Funds

Comments: A few commenters support the 30-day timeframe for an institution to return all Title IV, HEA program funds for which it is responsible. In particular, the commenters felt that it is reasonable to expect that FFEL Program funds be returned at the same time as all other Title IV, HEA program funds. The commenters believed that this should not be significantly burdensome to institutions because most FFEL Program funds are delivered electronically. A couple of commenters contended that an institution should be allowed 45 days, rather than 30 days to return all Title IV, HEA program funds for which it is responsible. The commenters asserted that 30 days is not enough time for an institution to adjust a student's account and perform all of the administrative functions necessary to process funds. A few commenters believed that 30 days is not a sufficient amount of time to determine if a student has unofficially withdrawn from the institutions. The commenter felt that more time was needed to permit the institution to contact professors and students.

Discussion: We agree with the commenters who believe that it is not unduly burdensome for an institution to return Title IV, HEA program funds, including FFEL Program funds, within 30 days of the date of the institution's determination that the student withdrew because these funds are often delivered electronically. This 30 day

period should also be enough time for the institution to contact professors and students, as needed, to meet these responsibilities.

Changes: None.

Section 668.22(k) Consumer Information

Comments: A few commenters felt that the requirements for determining a student's earned Title IV, HEA program aid upon withdrawal would be too difficult for a student or potential student to understand, especially since the student is likely to be subject to an institutional refund policy as well. Two commenters believe that it will be difficult to communicate to a student the actual amount of Title IV, HEA program assistance that they will receive because it will vary depending on if and when a student withdraws. One commenter asked if information on determining a student's earned Title IV, HEA program aid upon withdrawal would be in *The Student Guide*, our publication for students that provides general information on Title IV, HEA program assistance. One commenter felt that the requirements for determining a student's earned Title IV, HEA program aid upon withdrawal will be more easily explained to students than the current Title IV, HEA refund requirements.

Discussion: We do not agree that the requirements for determining the treatment of Title IV, HEA program funds when a student withdraws will be too difficult for a student to understand. We note that a general write-up on the treatment of a student's Title IV, HEA program funds when he or she withdraws is contained in *The Student Guide* for the 2000–2001 award year.

Changes: None.

Section 682.207 Due Diligence in Disbursing a Loan

Comments: One commenter believed that the social security number of a parent borrower should be added to the information that a lender must provide to an institution when the lender disburses a loan directly to a borrower for attendance at a foreign institution, if the loan disbursed is a PLUS loan. The commenter felt that a parent's social security number is necessary for recordkeeping and access purposes. The commenter noted that if the institution must return funds to the lender or correspond with lender regarding an inquiry about the PLUS loan, the institution will need the parent's social security number to ensure proper identification and/or application of the funds.

Discussion: We agree that a parent's social security number is information that an institution must have for proper recordkeeping and identification of PLUS loan funds.

Changes: Section 682.207(b)(1)(v)(E)(2) has been amended to require that a lender must provide the social security number of a parent borrower that was provided on the PLUS loan application to an institution when the lender disburses a loan directly to a borrower for attendance at a foreign institution, if the loan disbursed is a PLUS loan.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (34 FR 43037–43038).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program.)

List of Subjects in 34 CFR Parts 668 and 682

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements, education, Loan programs—education, vocational education.

Dated: October 25, 1999.

Richard W. Riley,

Secretary of Education.

The Secretary amends parts 668, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is amended to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c–1, unless otherwise noted.

2. Section 668.8 is amended by revising paragraph (f)(2) to read as follows:

§ 668.8 Eligible program.

* * * * *

(f) * * *

(2) Subtract from the number of students determined under paragraph (f)(1) of this section, the number of regular students who, during that award year, withdrew from, dropped out of, or were expelled from the program and were entitled to and actually received, in a timely manner a refund of 100 percent of their tuition and fees.

* * * * *

3. Section 668.14 is amended by revising paragraph (b)(25)(ii) to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(25) * * *

(ii) Returns of title IV, HEA program funds that the institution or its servicer may be required to make; and

* * * * *

4. Section 668.16 is amended by revising paragraphs (h)(3) and (l)(2) to read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(h) * * *

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, the requirements for the treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student's aid package;

* * * * *

(l) * * *

(2) Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees;

* * * * *

5. Section 668.22 is revised to read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

(a) *General.* (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance (not including Federal Work-Study or the non-Federal share of FSEOG awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method) that the student earned as of the student's withdrawal date in accordance with paragraph (e) of this section.

(2) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is less than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew—

(i) The difference between these amounts must be returned to the title IV programs in accordance with paragraphs (g) and (h) of this section in the order specified in paragraph (i) of this section; and

(ii) No additional disbursements may be made to the student for the payment period or period of enrollment.

(3) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is greater than the total amount of title IV grant or loan assistance, or both, that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew, the difference between these amounts must be treated as a post-withdrawal disbursement in accordance with paragraph (a)(4) of this section and § 668.164(g)(2).

(4)(i)(A) If outstanding charges exist on the student's account, the institution may credit the student's account in accordance with § 668.164(d)(1), (d)(2), and (d)(3) with all or a portion of the post-withdrawal disbursement described in paragraph (a)(3) of this section, up to the amount of the outstanding charges.

(B) If Direct Loan, FFEL, or Federal Perkins Loan Program funds are used to credit the student's account, the institution must notify the student, or parent in the case of a PLUS loan, and provide an opportunity for the borrower to cancel all or a portion of the loan, in accordance with § 668.165(a)(2), (a)(3), (a)(4), and (a)(5).

(ii)(A) The institution must offer any amount of a post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section to the student, or the parent in the case of a PLUS loan, within 30 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section, by providing a written notification to the student, or parent in the case of PLUS loan funds. The written notification must—

(*1*) Identify the type and amount of the title IV funds that make up the post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section;

(*2*) Explain that the student or parent may accept or decline some or all of the post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section; and

(*3*) Advise the student or parent that no post-withdrawal disbursement will be made to the student or parent if the student or parent does not respond within 14 days of the date that the institution sent the notification, unless the institution chooses to make a post-withdrawal disbursement in accordance with paragraph (a)(4)(ii)(D) of this section.

(B) If the student or parent submits a timely response that instructs the institution to make all or a portion of the post-withdrawal disbursement, the institution must disburse the funds in the manner specified by the student or parent within 90 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(C) If the student or parent does not respond to the institution's notice, no portion of the post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section may be disbursed.

(D) If a student or parent submits a late response to the institution's notice, the institution may make the post-withdrawal disbursement as instructed by the student or parent or decline to do so.

(E) If a student or parent submits a late response to the institution and the institution does not choose to make the post-withdrawal disbursement in accordance with paragraph (a)(4)(ii)(D) of this section, the institution must inform the student or parent electronically or in writing concerning the outcome of the post-withdrawal disbursement request.

(iii) A post-withdrawal disbursement must be made from available grant funds before available loan funds.

(b) *Withdrawal date for a student who withdraws from an institution that is required to take attendance.* (1) For purposes of this section, for a student who ceases attendance at an institution that is required to take attendance, including a student who does not return from an approved leave of absence, as defined in paragraph (d) of this section, or a student who takes a leave of absence that does not meet the

requirements of paragraph (d) of this section, the student's withdrawal date is the last date of academic attendance as determined by the institution from its attendance records.

(2) An institution must document a student's withdrawal date determined in accordance with paragraph (b)(1) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(3)(i) An institution is "required to take attendance" if the institution is required to take attendance for some or all of its students by an entity outside of the institution (such as the institution's accrediting agency or state agency).

(ii) If an outside entity requires an institution to take attendance for only some students, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for those students.

(c) *Withdrawal date for a student who withdraws from an institution that is not required to take attendance.* (1) For purposes of this section, for a student who ceases attendance at an institution that is not required to take attendance, the student's withdrawal date is—

(i) The date, as determined by the institution, that the student began the withdrawal process prescribed by the institution;

(ii) The date, as determined by the institution, that the student otherwise provided official notification to the institution, in writing or orally, of his or her intent to withdraw;

(iii) If the student ceases attendance without providing official notification to the institution of his or her withdrawal in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this section, the mid-point of the payment period (or period of enrollment, if applicable);

(iv) If the institution determines that a student did not begin the institution's withdrawal process or otherwise provide official notification (including notice from an individual acting on the student's behalf) to the institution of his or her intent to withdraw because of illness, accident, grievous personal loss, or other such circumstances beyond the student's control, the date that the institution determines is related to that circumstance;

(v) If a student does not return from an approved leave of absence as defined in paragraph (d) of this section, the date that the institution determines the student began the leave of absence; or

(vi) If a student takes a leave of absence that does not meet the requirements of paragraph (d) of this section, the date that the student began the leave of absence.

(2)(i)(A) An institution may allow a student to rescind his or her official notification to withdraw under paragraph (c)(1)(i) or (ii) of this section by filing a written statement that he or she is continuing to participate in academically-related activities and intends to complete the payment period or period of enrollment.

(B) If the student subsequently ceases to attend the institution prior to the end of the payment period or period of enrollment, the student's rescission is negated and the withdrawal date is the student's original date under paragraph (c)(1)(i) or (ii) of this section, unless a later date is determined under paragraph (c)(3) of this section.

(ii) If a student both begins the withdrawal process prescribed by the institution and otherwise provides official notification of his or her intent to withdraw in accordance with paragraphs (c)(1)(i) and (c)(1)(ii) of this section respectively, the student's withdrawal date is the earlier date unless a later date is determined under paragraph (c)(3) of this section.

(3)(i) Notwithstanding paragraphs (c)(1) and (2) of this section, an institution that is not required to take attendance may use as the student's withdrawal date a student's last date of attendance at an academically-related activity provided that the institution documents that the activity is academically related and documents the student's attendance at the activity.

(ii) An "academically-related activity" includes, but is not limited to, an exam, a tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment or attending a study group that is assigned by the institution.

(4) An institution must document a student's withdrawal date determined in accordance with paragraphs (c)(1), (2), and (3) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(5)(i) "Official notification to the institution" is a notice of intent to withdraw that a student provides to an office designated by the institution.

(ii) An institution must designate one or more offices at the institution that a student may readily contact to provide official notification of withdrawal.

(d) *Approved leave of absence.* (1) For purposes of this section (and, for a title IV, HEA program loan borrower, for purposes of terminating the student's in-school status), an institution does not have to treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if—

(i) The institution has a formal policy regarding leaves of absence;

(ii) The student followed the institution's policy in requesting the leave of absence;

(iii) The institution determines that there is a reasonable expectation that the student will return to the school;

(iv) The institution approved the student's request in accordance with the institution's policy;

(v) The leave of absence does not involve additional charges by the institution;

(vi) It is the only leave of absence granted to the student in a 12-month period, except as provided for in paragraph (d)(2) of this section;

(vii) The leave of absence does not exceed 180 days in any 12-month period;

(viii) Upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

(ix) If the student is a title IV, HEA program loan recipient, the institution explains to the student, prior to granting the leave of absence, the effects that the student's failure to return from a leave of absence may have on the student's loan repayment terms, including the exhaustion of some or all of the student's grace period.

(2) Notwithstanding paragraph (d)(1)(vi) of this section, provided that the total number of days of all leaves of absence does not exceed 180 days in any 12-month period, an institution may treat—

(i) One leave of absence subsequent to a leave of absence that is granted in accordance with (d)(1)(vi) of this section as an approved leave of absence if the subsequent leave of absence does not exceed 30 days and the institution determines that the subsequent leave of absence is necessary due to unforeseen circumstances; and

(ii) Subsequent leaves of absence as approved leaves of absence if the institution documents that the leaves of absence are granted for jury duty, military reasons, or circumstances covered under the Family and Medical Leave Act of 1993.

(3) If a student does not resume attendance at the institution on or before the end of a leave of absence that meets the requirements of this section, the institution must treat the student as a withdrawal in accordance with the requirements of this section.

(4) For purposes of this paragraph—

(i) The number of days in a leave of absence are counted beginning with the first day of the student's initial leave of absence in a 12-month period.

(ii) A "12-month period" begins on the first day of the student's initial leave of absence.

(iii) An institution's leave of absence policy is a "formal policy" if the policy—

(A) Is in writing and publicized to students; and

(B) Requires students to provide a written, signed, and dated request for a leave of absence prior to the leave of absence. However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student's request for a leave of absence, if the institution documents its decision and collects the written request at a later date.

(e) *Calculation of the amount of title IV assistance earned by the student.*

(1) *General.* The amount of title IV grant or loan assistance that is earned by the student is calculated by—

(i) Determining the percentage of title IV grant or loan assistance that has been earned by the student, as described in paragraph (e)(2) of this section; and

(ii) Applying this percentage to the total amount of title IV grant or loan assistance that was disbursed (and that could have been disbursed, as defined in paragraph (l)(1) of this section) to the student, or on the student's behalf, for the payment period or period of enrollment as of the student's withdrawal date.

(2) *Percentage earned.* The percentage of title IV grant or loan assistance that has been earned by the student is—

(i) Equal to the percentage of the payment period or period of enrollment that the student completed (as determined in accordance with paragraph (f) of this section) as of the student's withdrawal date, if this date occurs on or before completion of 60 percent of the—

(A) Payment period or period of enrollment for a program that is measured in credit hours; or

(B) Clock hours scheduled to be completed for the payment period or period of enrollment for a program that is measured in clock hours; or

(ii) 100 percent, if the student's withdrawal date occurs after completion of 60 percent of the—

(A) Payment period or period of enrollment for a program that is measured in credit hours; or

(B) Clock hours scheduled to be completed for the payment period or period of enrollment for a program measured in clock hours.

(3) *Percentage unearned.* The percentage of title IV grant or loan assistance that has not been earned by the student is calculated by determining the complement of the percentage of title IV grant or loan assistance earned by the student as described in paragraph (e)(2) of this section.

(4) *Total amount of unearned title IV assistance to be returned.* The unearned amount of title IV assistance to be returned is calculated by subtracting the amount of title IV assistance earned by the student as calculated under paragraph (e)(1) of this section from the amount of title IV aid that was disbursed to the student as of the date of the institution's determination that the student withdrew.

(5) *Use of payment period or period of enrollment.* (i) The treatment of title IV grant or loan funds if a student withdraws must be determined on a payment period basis for a student who attended a standard term-based (semester, trimester, or quarter) educational program.

(ii)(A) The treatment of title IV grant or loan funds if a student withdraws may be determined on either a payment period basis or a period of enrollment basis for a student who attended a non-term based educational program or a nonstandard term-based educational program.

(B) An institution must consistently use either a payment period or period of enrollment for all purposes of this section for each of the following categories of students who withdraw from the same non-term based or nonstandard term-based educational program:

(*1*) Students who have attended an educational program at the institution from the beginning of the payment period or period of enrollment.

(*2*) Students who re-enter the institution during a payment period or period of enrollment.

(*3*) Students who transfer into the institution during a payment period or period of enrollment.

(f) *Percentage of payment period or period of enrollment completed.* (1) For purposes of paragraph (e)(2)(i) of this section, the percentage of the payment period or period of enrollment completed is determined—

(i) In the case of a program that is measured in credit hours, by dividing the total number of calendar days in the payment period or period of enrollment into the number of calendar days completed in that period as of the student's withdrawal date; and

(ii) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours—

(A) Completed by the student in that period as of the student's withdrawal date; or

(B) Scheduled to be completed as of the student's withdrawal date, if the clock hours completed in the period are not less than 70 percent of the hours that were scheduled to be completed by the student as of the student's withdrawal date.

(2)(i) The total number of calendar days in a payment period or period of enrollment includes all days within the period, except that scheduled breaks of at least five consecutive days are excluded from the total number of calendar days in a payment period or period of enrollment and the number of calendar days completed in that period.

(ii) The total number of calendar days in a payment period or period of enrollment does not include days in which the student was on an approved leave of absence.

(g) *Return of unearned aid, responsibility of the institution.* (1) The institution must return, in the order specified in paragraph (i) of this section, the lesser of—

(i) The total amount of unearned title IV assistance to be returned as calculated under paragraph (e)(4) of this section; or

(ii) An amount equal to the total institutional charges incurred by the student for the payment period or period of enrollment multiplied by the percentage of title IV grant or loan assistance that has not been earned by the student, as described in paragraph (e)(3) of this section.

(2) For purposes of this section, "institutional charges" are tuition, fees, room and board (if the student contracts with the institution for the room and board) and other educationally-related expenses assessed by the institution.

(3) If, for a non-term program an institution chooses to calculate the treatment of title IV assistance on a payment period basis, but the institution charges for a period that is longer than the payment period, "total institutional charges incurred by the student for the payment period" is the greater of—

(i) The prorated amount of institutional charges for the longer period; or

(ii) The amount of title IV assistance retained for institutional charges as of the student's withdrawal date.

(h) *Return of unearned aid, responsibility of the student.* (1) After the institution has allocated the unearned funds for which it is responsible in accordance with

paragraph (g) of this section, the student must return assistance for which the student is responsible in the order specified in paragraph (i) of this section.

(2) The amount of assistance that the student is responsible for returning is calculated by subtracting the amount of unearned aid that the institution is required to return under paragraph (g) of this section from the total amount of unearned title IV assistance to be returned under paragraph (e)(4) of this section.

(3) The student (or parent in the case of funds due to a PLUS Loan) must return or repay, as appropriate, the amount determined under paragraph (h)(1) of this section to—

(i) Any title IV loan program in accordance with the terms of the loan; and

(ii) Any title IV grant program as an overpayment of the grant; however, a student is not required to return 50 percent of the grant assistance that is the responsibility of the student to repay under this section.

(4)(i) A student who owes an overpayment under this section remains eligible for title IV, HEA program funds through and beyond the earlier of 45 days from the date the institution sends a notification to the student of the overpayment, or 45 days from the date the institution was required to notify the student of the overpayment if, during those 45 days the student—

(A) Repays the overpayment in full to the institution;

(B) Enters into a repayment agreement with the institution in accordance with repayment arrangements satisfactory to the institution; or

(C) Signs a repayment agreement with the Secretary, which will include terms that permit a student to repay the overpayment while maintaining his or her eligibility for title IV, HEA program funds.

(ii) Within 30 days of the date of the institution's determination that the student withdrew, an institution must send a notice to any student who owes a title IV, HEA grant overpayment as a result of the student's withdrawal from the institution in order to recover the overpayment in accordance with paragraph (h)(4)(i) of this section.

(iii) If an institution chooses to enter into a repayment agreement in accordance with paragraph (h)(4)(i)(B) of this section with a student who owes an overpayment of title IV, HEA grant funds, it must—

(A) Provide the student with terms that permit the student to repay the overpayment while maintaining his or her eligibility for title IV, HEA program funds; and

(B) Require repayment of the full amount of the overpayment within two years of the date of the institution's determination that the student withdrew.

(iv) An institution must refer to the Secretary, in accordance with procedures required by the Secretary, an overpayment of title IV, HEA grant funds owed by a student as a result of the student's withdrawal from the institution if—

(A) The student does not repay the overpayment in full to the institution, or enter a repayment agreement with the institution or the Secretary in accordance with paragraph (h)(4)(i) of this section within the earlier of 45 days from the date the institution sends a notification to the student of the overpayment, or 45 days from the date the institution was required to notify the student of the overpayment;

(B) At any time the student fails to meet the terms of the repayment agreement with the institution entered into in accordance with paragraph (h)(4)(i)(B) of this section; or

(C) The student chooses to enter into a repayment agreement with the Secretary.

(v) A student who owes an overpayment is ineligible for title IV, HEA program funds—

(A) If the student does not meet the requirements in paragraph (h)(4)(i) of this section, on the day following the 45-day period in that paragraph; or

(B) As of the date the student fails to meet the terms of the repayment agreement with the institution or the Secretary entered into in accordance with paragraph (h)(4)(i) of this section.

(vi) A student who is ineligible under paragaraph (h)(4)(v) of this section regains eligibility if the student and the Secretary enter into a repayment agreement.

(i) *Order of return of title IV funds.* (1) *Loans.* Unearned funds returned by the institution or the student, as appropriate, in accordance with paragraph (g) or (h) of this section respectively, must be credited to outstanding balances on title IV loans made to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Those funds must be credited to outstanding balances for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Unsubsidized Federal Stafford loans.

(ii) Subsidized Federal Stafford loans.

(iii) Unsubsidized Federal Direct Stafford loans.

(iv) Subsidized Federal Direct Stafford loans.

(v) Federal Perkins loans.

(vi) Federal PLUS loans received on behalf of the student.

(vii) Federal Direct PLUS received on behalf of the student.

(2) *Remaining funds.* If unearned funds remain to be returned after repayment of all outstanding loan amounts, the remaining excess must be credited to any amount awarded for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Federal Pell Grants.

(ii) Federal SEOG Program aid.

(iii) Other grant or loan assistance authorized by title IV of the HEA.

(j) *Timeframe for the return of title IV funds.* (1) An institution must return the amount of title IV funds for which it is responsible under paragraph (g) of this section as soon as possible but no later than 30 days after the date of the institution's determination that the student withdrew as defined in paragraph (l)(3) of this section.

(2) An institution must determine the withdrawal date for a student who withdraws without providing notification to the institution no later than 30 days after the end of the earlier of the—

(i) Payment period or period of enrollment, as appropriate, in accordance with paragraph (e)(5) of this section;

(ii) Academic year in which the student withdrew; or

(iii) Educational program from which the student withdrew.

(k) *Consumer information.* An institution must provide students with information about the requirements of this section in accordance with § 668.43.

(l) *Definitions.* For purposes of this section—

(1) Title IV grant or loan funds that "could have been disbursed" are determined in accordance with the late disbursement provisions in § 668.164(g).

(2) A "period of enrollment" is the academic period established by the institution for which institutional charges are generally assessed (i.e. length of the student's program or academic year).

(3) The "date of the institution's determination that the student withdrew" is—

(i) For a student who provides notification to the institution of his or her withdrawal, the student's withdrawal date as determined under paragraph (c) of this section or the date of notification of withdrawal, whichever is later;

(ii) For a student who did not provide notification of his of her withdrawal to

the institution, the date that the institution becomes aware that the student ceased attendance;

(iii) For a student who does not return from an approved leave of absence, the earlier of the date of the end of the leave of absence or the date the student notifies the institution that he or she will not be returning to the institution; or

(iv) For a student whose rescission is negated under paragraph (c)(2)(i)(B) of this section, the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment.

(v) For a student who takes a leave of absence that is not approved in accordance with paragraph (d) of this section, the date that the student begins the leave of absence.

(4) A "recipient of title IV grant or loan assistance" is a student for whom the requirements of § 668.164(g)(2) have been met.

(Approved by the Office of Management and Budget under control number 1845–0022)
(Authority: 20 U.S.C. 1091b)

6. Section 668.24 is amended by revising paragraph (c)(1)(iv)(C) and (c)(1)(iv)(D) to read as follows:

§ 668.24 Record retention and examinations.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(C) The amount, date, and basis of the institution's calculation of any refunds or overpayments due to or on behalf of the student, or the treatment of title IV, HEA program funds when a student withdraws; and

(D) The payment of any overpayment or the return of any title IV, HEA program funds to the title IV, HEA program fund, a lender, or the Secretary, as appropriate;

* * * * *

7. Section 668.25 is amended by revising paragraph (c)(4)(ii) to read as follows:

§ 668.25 Contracts between an institution and a third-party servicer.

* * * * *

(c) * * *

(4) * * *

(ii) Calculate and return any unearned title IV, HEA program funds to the title IV, HEA program accounts and the student's lender, as appropriate, in accordance with the provisions of §§ 668.21 and 668.22, and applicable program regulations; and

* * * * *

8. Section 668.26 is amended by revising paragraph (b)(7) to read as follows:

§ 668.26 End of an institution's participation in the title IV, HEA programs.

* * * * *

(b) * * *

(7) Continue to comply with the requirements of § 668.22 for the treatment of title IV, HEA program funds when a student withdraws.

* * * * *

9. Section 668.83 is amended by revising paragraph (c)(2)(ii)(C) to read as follows:

§ 668.83 Emergency action.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) The institution, or servicer, as applicable, lacks the administrative or financial ability to make all required payments under § 668.22; and

* * * * *

10. Section 668.92 is amended by revising paragraph (b)(2) to read as follows:

§ 668.92 Fines.

* * * * *

(b) * * *

(2) Required refunds, including the treatment of title IV, HEA program funds when a student withdraws under § 668.22.

* * * * *

11. Section 668.95 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 668.95 Reimbursements, refunds, and offsets.

* * * * *

(b) * * *

(2) * * *

(i) Refunds or returns of title IV, HEA program funds required under program regulations when a student withdraws.

* * * * *

12. Section 668.164 is amended by revising paragraph (g)(1) to read as follows:

§ 668.164 Disbursing funds.

* * * * *

(g) * * *

(1) *Ineligible students who may receive a late disbursement.* (i) An institution may make a late disbursement under paragraph (g)(2) of this section, if the student became ineligible solely because—

(A) For purposes of the Direct Loan and FFEL programs, the student is no longer enrolled at the institution as at least a half-time student for the loan period; and

(B) For purposes of the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(ii) Notwithstanding paragraph (g)(1)(i) of this section, a student who withdraws from an institution during a payment period or period of enrollment can receive additional disbursements of title IV, HEA program funds in accordance with the requirements of § 668.22 only.

* * * * *

13. Section 668.171 is amended by revising paragraph (b)(4)(i) to read as follows:

§ 668.171 General.

* * * * *

(b) * * *

(4) * * *

(i) Refunds that it is required to make under its refund policy, including the return of title IV, HEA program funds for which it is responsible under § 668.22 and the payment of post-withdrawal disbursements under § 668.22; and

* * * * *

14. Section 668.173 is amended by revising paragraphs (a) introductory text, (b) introductory text, (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 668.173 Refund reserve standards.

(a) *General.* The Secretary considers that an institution has sufficient cash reserves (as required under § 668.171(b)(2)) to make refunds that it is required to make under its refund policy, including the return of title IV, HEA program funds for which it is responsible under § 668.22 and the payment of post-withdrawal disbursements under § 668.22 if the institution—

* * * * *

(b) *Timely refunds.* An institution demonstrates that it makes required refunds, including payments required under § 668.22, if the auditor or auditors who conducted the institution's compliance audits for the institution's two most recently completed fiscal years, or the Secretary or a State or guaranty agency that conducted a review of the institution covering those fiscal years—

(1) * * *

(i) The institution made late refunds to 5 percent or more of the students in that sample. For purposes of determining the percentage of late refunds under this paragraph, the auditor or reviewer must include in the sample only those title IV, HEA program recipients who received or should have

received a refund or for whom a repayment of unearned title IV, HEA program funds was made or should have been made under § 668.22; or

(ii) The institution made only one late refund or repayment of unearned title IV, HEA program funds for a student in that sample; and

* * * * *

Appendix A to Part 668 [Removed]

15. Remove and reserve appendix A to part 668.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

16. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071, to 1087–2, unless otherwise noted.

17. Section 682.207 is amended as follows by:

A. Adding a new paragraph (b)(1)(v)(E).

B. Revising the OMB control number following the section.

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(E) If a lender disburses a loan directly to the borrower for attendance at an eligible foreign school, as provided in paragraph (b)(1)(v)(D)(*1*) of this section, the lender must, at the time of disbursement, notify the school of—

(*1*) The name and social security number of the student;

(*2*) The name and social security number of the parent borrower, if the loan disbursed is a PLUS loan;

(*3*) The type of loan;

(*4*) The amount of the disbursement, including the amount of any fees assessed the borrower;

(*5*) The date of the disbursement; and

(*6*) The name, address, telephone and fax number or electronic address of the lender, servicer, or guaranty agency to which any inquiries should be addressed.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0022)

18. Section 682.209 is amended by revising paragraph (i) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(i) *Treatment by a lender of borrowers' title IV, HEA program funds received from schools if the borrower withdraws.* (1) A lender shall treat a refund or a return of title IV, HEA program funds under § 668.22 when a student withdraws received by the lender from a school as a credit against the principal amount owed by the borrower on the borrower's loan.

(2)(i) If a lender receives a refund or a return of title IV, HEA program funds under § 668.22 when a student withdraws from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing under § 682.209(f) or by a Consolidation loan, the lender must transmit the amount of the payment, within 30 days of its receipt, to the lender to whom it assigned the loan, or to the lender that discharged the prior loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund or a return of title IV, HEA program funds transmitted under paragraph (i)(2)(i) of this section, the holder of the loan promptly must provide written notice to the borrower that the holder has received the return of title IV, HEA program funds.

* * * * *

19. Section 682.604 is amended by revising paragraph (c)(4) to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(4) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 668.22(d).

* * * * *

20. Section 682.605 is amended by revising paragraphs (a) and (b) to read as follows:

§ 682.605 Determining the date of a student's withdrawal.

(a) Except in the case of a student who does not return for the next scheduled term following a summer break, which includes any summer term or terms in which classes are offered but students are not generally required to attend, a school must follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal. In the case of a student who does not return from a summer break, the school must follow the procedures in § 668.22(b) or (c), as applicable, except that the school shall determine the student's withdrawal date no later than 30 days after the first day of the next scheduled term.

(b) The school must use the withdrawal date determined under § 668.22(b) or (c), as applicable for the purpose of reporting to the lender the date that the student has withdrawn from the school.

* * * * *

21. Section 682.607 is amended to read as follows:

§ 682.607 Payment of a refund or a return of title IV, HEA program funds to a lender upon a student's withdrawal.

(a) *General.* By applying for a FFEL loan, a borrower authorizes the school to pay directly to the lender that portion of a refund or return of title IV, HEA program funds from the school that is allocable to the loan upon the borrower's withdrawal. A school—

(1) Must pay that portion of the student's refund or return of title IV, HEA program funds that is allocable to a FFEL loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Must provide simultaneous written notice to the borrower if the school makes a payment of a refund or a return of title IV, HEA program funds to a lender on behalf of that student.

(b) *Allocation of a refund or returned title IV, HEA program funds.* In determining the portion of a refund or the return of title IV, HEA program funds upon a student's withdrawal for an academic period that is allocable to a FFEL loan received by the borrower for that academic period, the school must follow the procedures established in part 668 for allocating a refund or return of title IV, HEA program funds.

(c) *Timely payment.* A school must pay a refund or a return of title IV, HEA program funds that is due in accordance with the timeframe in § 668.22(j).

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

22. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

23. Section 685.211 is amended by revising paragraph (c) to read as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(c) Refunds and returns of title IV, HEA program funds from schools. The Secretary applies any refund or return of title IV, HEA program funds that the Secretary receives from a school under § 668.22 against the borrower's outstanding principal and notifies the borrower of the refund or return.

* * * * *

24. Section 685.215 is amended by revising paragraph (k) to read as follows:

§ 685.215 Consolidation.

* * * * *

(k) Refunds and returns of title IV, HEA program funds received from schools. If a lender receives a refund or return of title IV, HEA program funds from a school on a loan that has been consolidated into a Direct Consolidation Loan, the lender shall transmit the refund or return and an explanation of the source of the refund or return to the Secretary within 30 days of receipt.

* * * * *

25. Section 685.305 is amended to read as follows:

§ 685.305 Determining the date of a student's withdrawal.

(a) Except as provided in paragraph (b) of this section, a school shall follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal.

(b) For a student who does not return for the next scheduled term following a summer break, which includes any summer term(s) in which classes are offered but students are not generally required to attend, a school shall follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal except that the school must determine the student's date of withdrawal no later than 30 days after the start of the next scheduled term.

(c) The school shall use the date determined under paragraph (a) or (b) of this section for the purpose of reporting to the Secretary the student's date of withdrawal and for determining when a refund or return of title IV, HEA program funds must be paid under § 685.306.

(Authority: 20 U.S.C. 1087 *et seq.*)

26. Section 685.306 is amended to read as follows:

§ 685.306 Payment of a refund or return of title IV, HEA program funds to the Secretary.

(a) *General.* By applying for a Direct Loan, a borrower authorizes the school to pay directly to the Secretary that of a refund or return of title IV, HEA program funds from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund or return of title IV, HEA program funds that is allocable to a Direct Loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund or return of title IV, HEA program funds to the Secretary on behalf of that student.

(b) *Determination, allocation, and payment of a refund or return of title IV, HEA program funds.* In determining the portion of a student's refund or return of title IV, HEA program funds that is allocable to a Direct Loan, the school shall follow the procedures established in 34 CFR 668.22 for allocating and paying a refund or return of title IV, HEA program funds that is due.

(Authority: 20 U.S.C. 1087a *et seq.*)

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Part VIII

Department of Transportation

Federal Railroad Administration

49 CFR Chapter II and Part 209
Proposed Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Chapter II and Part 209

[FRA Docket No. FRA–1999–5685, Notice No. 4]

RIN 2130–AB33

Proposed Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Operations

AGENCY: Federal Railroad Administration (FRA), Transportation (DOT).

ACTION: Proposed rule and policy statement.

SUMMARY: The Federal Railroad Administration (FRA) and the Federal Transit Administration are jointly developing a policy concerning safety issues related to light rail transit operations taking place on the general railroad system. That policy will describe how the two agencies will coordinate use of their respective safety authorities over shared use operations. FRA is issuing this proposed policy statement to describe the extent of its statutory jurisdiction over railroad passenger operations (which covers all railroads except urban rapid transit operations not connected to the general railroad system) and explain how it will exercise that jurisdiction. The proposal also explains FRA's waiver process and discusses factors that should be addressed in any petition submitted by light rail operators and other railroads seeking approval of shared use of the general railroad system.

FRA is not required by law to provide notice and opportunity for comment on a statement of policy. However, given the number of shared use operations being planned around the nation and the level of interest in how the safety of those operations will be assured, the agency concluded that it could benefit from receiving comments before drafting its policy in final. FRA does not plan to hold a hearing, but will discuss the proposed statement with interested groups.

DATES: Submit written comments on this document on or before January 14, 2000.

ADDRESSES: Procedures for written comments: Submit one copy to the Department of Transportation Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. All docket material on the proposed statement will be available for inspection at this address and on the Internet at *http://doms.dot.gov*. (Docket hours at the Nassif Building are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays.) Persons desiring notification that their comments have been received should submit a stamped, self-addressed postcard with their comments. The postcard will be returned to the addressee with a notation of the date on which the comments were received.

FOR FURTHER INFORMATION CONTACT: Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6029) or David H. Kasminoff, Trial Attorney, FRA, RCC'12, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6043).

Proposed Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations

Introduction

In many areas of the United States, local communities are planning or developing passenger operations that will operate over the lines of new or existing railroads. Many of the new operations will use rail equipment commonly referred to as "light rail" due to its generally lighter construction than equipment ordinarily used by freight and most passenger railroads. Some of these light rail operations will operate over lines also used by conventional freight and passenger railroads.

The Department of Transportation (DOT) fully supports the development of railroad passenger operations as an important means of expanding transportation services in this country as we enter the new millennium, without adding additional congestion to the nation's crowded highways and airports. DOT's Federal Transit Administration (FTA) will play a critical role in financing many of these new and expanded rail systems.

DOT's most important mission is ensuring safe transportation. DOT's Federal Railroad Administration (FRA) has primary responsibility for the safety of railroad passenger operations. Consistent with FRA's safety role, in a final rule published in the **Federal Register** on December 27, 1995, FTA announced that it would begin requiring states to oversee the safety of rail fixed guideways systems not regulated by FRA. 60 FR 67034; see 49 U.S.C. 5530, 49 CFR part 659. Under its statutory scheme, FTA does not directly enforce safety statutes or regulations against rail fixed guideway systems, nor does FTA have safety inspectors who enter upon the regulated properties to perform inspections.

On May 25, 1999, FRA and FTA published a "Proposed Joint Statement of Agency Policy Concerning Shared Use of the General Railroad System by Conventional Railroads and Light Rail Transit Systems" (Proposed Joint Policy Statement), in which the two agencies explained how they intend to coordinate use of their respective safety authorities with regard to shared use operations. 64 FR 28238. The document also summarized how the process of obtaining waivers of FRA's safety regulations may work, especially where the light rail and conventional rail operations occur at different times of day. As discussed in the Proposed Joint Policy Statement, FRA is now issuing this proposed statement of agency policy concerning its safety jurisdiction over railroad passenger operations in order to provide "a thorough discussion of the extent and exercise of [its] jurisdiction and guidance on which of FRA's safety rules are likely to apply in particular operational situations." 64 FR at 28239. Because the proposed joint FRA/FTA statement provided some guidance on FRA's waiver process and this proposed statement amplifies that guidance, the two statements overlap somewhat and to some degree are repetitious. However, when final statements are issued, the guidance on the FRA waiver process will be found in FRA's statement, and the joint statement will focus only on the two agencies' plans for coordination of their respective authorities. The joint policy statement and FRA's separate statement are being handled under the same docket number, and the same comment deadline (January 14, 2000) applies to both, so there is no need for commenters to file duplicative comments. Comments can focus on both proposed statements. (The comment period on the joint policy statement was extended further to January 14, 2000 in Notice No. 3 so that the comment periods for both notices would coincide.)

Purpose of FRA's Separate Statement

The current proliferation of railroad passenger operations, especially those involving shared use of trackage by a conventional railroad and a light rail operator, creates a need for FRA to clarify the extent to which it will exercise its jurisdiction over those operations. As explained below, FRA's safety jurisdiction is very broad and extends to all entities that can be construed as railroads by virtue of their providing non-highway ground transportation over rails or

electromagnetic guideways (and will extend to future railroads using other technologies not yet in use), but excludes urban rapid transit operations not connected to the general railroad system. While FRA believes its safety jurisdiction extends to nearly the entire universe of railroads, for reasons of policy it sometimes chooses not to exercise its authority over certain types of operations. For example, because of the limitations on its inspection resources and its assessment of the practical limitations of its role, FRA does not currently exercise its jurisdiction over railroads whose operations are confined to the boundaries of an industrial plant or over insular tourist operations.

FRA's issuance of final rules on passenger train emergency preparedness (63 FR 24630, May 4, 1998) and passenger equipment safety standards (64 FR 25540, May 12, 1999) makes it all the more timely for FRA to provide clarification on how it exercises its jurisdiction. This clarification will help the developers and operators of passenger systems plan their activities accordingly. As set forth in the text of the applicability sections to FRA's regulations (e.g., 49 CFR 239.3), all of FRA's regulations already apply under their own terms to passenger operations on the general railroad system of transportation; this proposed policy statement does not alter any of those requirements, but rather explains the ramifications of FRA's regulations for the various kinds of railroad passenger operations. Also, this proposed statement offers further explanation of FRA's waiver process and how FRA is likely to respond to waiver petitions under certain circumstances.

While passenger railroads offer the traveling public one of the safest forms of transportation available, passenger trains are exposed to a variety of safety hazards. Some of these hazards are endemic to the nation's rail passenger operating environment, involving the operation of passenger trains commingled with freight trains, often over track with frequent grade crossings used by heavy highway equipment. Collisions with a wide range of objects may occur at various speeds under a number of different circumstances. In addition to freight trains and highway vehicles, these objects include maintenance-of-way equipment and other passenger trains. Although most of these collisions occur at the front or rear of the train, impact into the side of the train can occur, especially at the junction of rail lines and at highway-rail grade crossings. The possibility of a passenger train collision with another train or a highway vehicle greatly concerns FRA because of the potential for significant harm, as demonstrated by actual accidents.

For example, on February 9, 1996, a near head-on collision occurred between two New Jersey Transit Rail Operations, Inc. trains on the borderline of Secaucus and Jersey City, New Jersey. Two crewmembers and one passenger were fatally injured, and 35 other individuals sustained injuries. The passenger fatality and most of the nonfatal injuries to passengers occurred on a train that was operating with the cab car (a car which provides passenger seating, as well as a location from which the train is operated) at the front of the train, followed by four passenger coaches and a locomotive pushing the train consist. (FRA Accident Investigation Report B–2–96.)

One week later, on February 16, 1996, a near-head-on collision occurred between a Maryland Rail Commuter Service (MARC) train and an Amtrak train on track owned by CSX Transportation, Inc. (CSXT) at Silver Spring, Maryland. The MARC train was operating with a cab car as the lead car in the train, followed by two passenger coaches and a locomotive pushing the consist. The collision separated the left front corner of the cab car from the roof to its sill plate, and tore off much of the forward left side of the car body. Three crewmembers and eight passengers were fatally injured, and 13 occupants of the MARC train sustained injuries. (FRA Accident Investigation Report B–3–96.)

On March 15, 1999, a southbound Amtrak train traveling 79 miles per hour and operating from Chicago, Illinois, to New Orleans, Louisiana, struck a flatbed semi-tractor trailer in Bourbonnais, Illinois, while the truck was occupying a highway-rail grade crossing. Due to the impact, two locomotives and 11 of the 14 cars in the train derailed. The train had continued upright until reaching a switch leading into a siding, where it struck two freight cars parked on the adjacent siding west of the main track. The nearest car was a gondola car loaded with steel bars and angle iron, and the second car was a covered hopper loaded with smoke stack emission fly ash. These cars were also derailed, destroying the gondola. The first six passenger cars of the Amtrak train piled up along with the tenth car, a coach. Of those cars, only the second car (a transition sleeper) was not destroyed. Fire from ruptured locomotive fuel tanks broke out, gutting the interior of the third car, a sleeping car. All but the last three cars derailed. The derailment and fire resulted in the deaths of 11 passengers, all of whom were located in the sleeping car, and injuries to 122 other passengers. (FRA Accident Investigation Report B–02–99.)

While none of these accidents involved light rail equipment, the accidents all illustrate the risks to passengers and crew presented by operations on the general railroad system. Those risks are at least as great where light rail equipment is used, especially if any potential exists for a collision with substantially heavier and structurally stronger conventional trains.

FRA's Legal Authority Over Railroad Safety

The Statutory Definition of "Railroad"

By delegation from the Secretary of Transportation, FRA administers the Federal railroad safety statutes that are codified at 49 U.S.C. 20101 through 21311 (chapters 201 through 213 of Title 49 of the United States Code) and also exercises enforcement authority in the rail mode under the hazardous materials transportation laws (49 U.S.C. Chapter 51). Under the railroad safety statutes, "railroad" is defined as follows:

> In this part—
>
> (1) "railroad"—
>
> (A) means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—
>
> (i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and
>
> (ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but
>
> (B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.
>
> (2) "railroad carrier" means a person providing railroad transportation.
>
> 49 U.S.C. 20102.

This definition, added by the Rail Safety Improvement Act of 1988 ("1988 Safety Act") Pub. L. No. 100–342, makes certain elements of FRA's safety jurisdiction quite clear:

- FRA, with one exception, has jurisdiction over any type of railroad regardless of the kind of equipment it uses, its connection to the general railroad system of transportation, or its status as a common carrier engaged in interstate commerce.
- Commuter and other short-haul railroad passenger operations in a metropolitan or suburban area (except for one type of short-haul operation, i.e., urban rapid transit) are railroads within FRA's jurisdiction whether or not they

are connected to the general railroad system.

- Rapid transit operations in an urban area that are not connected to the general railroad system are not within FRA's jurisdiction. This is the sole exception to FRA's jurisdiction over railroads. There is no exception for "light rail," a term not found in the statute.
- Rapid transit operations in an urban area that are connected to the general railroad system of transportation are within FRA's jurisdiction.

The statutory definition, however, also leaves some important questions unanswered. The statute does not provide a definition of either "commuter or other short-haul railroad passenger service" or "rapid transit operations in an urban area." The statute does not state clearly whether urban rapid transit is a sub-category of "other short-haul" service or is a completely separate category. The statute distinguishes commuter from rapid transit service, but does not provide the characteristics of each or indicate whether the two types of service share some characteristics. The statute does not define "connected to" but makes connection the critical issue in determining whether rapid transit operations are within FRA's jurisdiction. Nor does the statute define "the general railroad system of transportation," another critical element in determining whether urban rapid transit operations are covered.

These unanswered questions are not academic. For example, if "commuter" and "rapid transit" were defined in the statute, distinguishing between the two types of service would be easier, and FRA would merely have to determine if there is a connection to the general railroad system in order to know if it had jurisdiction. However, it is possible for a railroad system in a metropolitan area to have characteristics of both commuter rail and rapid transit. In those cases, assuming there is no clear connection to the general system, what criteria should FRA use to determine whether it has jurisdiction and, if it does, whether to assert it? A brief review of the legislative history of the definition of the term "railroad" helps to provide some answers.

Legislative History of Definition of 'Railroad'

Prior to 1970, FRA administered a variety of railroad safety statutes that applied only to common carriers engaged in interstate or foreign commerce by rail. For example, FRA administered the Safety Appliance Acts, formerly 45 U.S.C. 1–16 (1982), now 49 U.S.C. 20301-20306. However, in 1970, Congress determined that there was a need for more comprehensive and uniform safety regulations in all areas of railroad operations and concluded that FRA needed to reach beyond common carriers to other types of railroads. Congress enacted the Federal Railroad Safety Act of 1970 ("FRSA"), Pub. L. No. 91–458, which (at § 202(a)) gave FRA authority to regulate "all areas of railroad safety," and conferred all powers necessary to detect and penalize violations of any rail safety law. Although that statute did not define the word "railroad," its legislative history made clear the breadth that Congress intended the word to convey. For example, the House Committee on Interstate and Foreign Commerce stated:

> The Secretary's authority to regulate extends to all areas of railroad safety. This legislation is intended to encompass all those means of rail transportation as are commonly included within the term. Thus "railroad" is not limited to the confines of "common carrier by railroad" as that language is used in the Interstate Commerce Act.

H.R. Rep. No. 91–1194, 91st Cong., 2d Sess. at 16 (1970). Congress clearly expected that this expanded jurisdiction would reach commuter and other short-haul passenger operations. The House Committee report stated: "the Secretary's jurisdiction would extend to rail operations in areas presently governed by compacts and other municipal authorities such as the Metropolitan Transit Authority in New York." *Id.*

FRA attempted to administer this broad mandate literally until the Chicago Transit Authority (CTA) successfully challenged FRA's assertion of jurisdiction over its rapid transit operations in 1977. In *Chicago Transit Authority* v. *Flohr* ("*CTA*"), 570 F.2d 1305 (7th Cir. 1977), the Seventh Circuit held that Congress did not intend the word "railroad" to apply to "urban rapid transit" such as CTA's. The court noted, in pertinent part, that:

> The CTA's rapid transit equipment consists of electrically self-powered units, substantially smaller and lighter than railroad cars; CTA rapid transit cars do not use the rails of any [conventional] railroad nor conversely, can [conventional] railroads use the CTA rails.

Id. at 1307.

The *CTA* decision did not address FRA's jurisdiction over commuter operations, and left FRA with little guidance about precisely what systems were outside of its jurisdiction. In 1982, FRA expressed to Congress a degree of doubt about the extent of its safety jurisdiction, particularly over a commuter line (Fox Chase-Newtown) operated by the Southeastern Pennsylvania Transportation Authority (SEPTA). Congress responded by including in the Rail Safety and Service Improvement Act of 1982 ("1982 Safety Act"), Pub. L. No. 97–468, a provision that made very clear its intention that FRA assert jurisdiction over commuter operations. Section 702(c) of that act stated that "all areas of railroad safety" in the FRSA includes "the safety of commuter or other short-haul rail passenger service in a metropolitan or suburban area, including any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979." The House Committee explained its intention as follows:

> This amendment is merely designed to clarify that commuter rail operations, such as the Fox Chase-Newtown line, are indeed subject to the FRSA. This clarification of FRA's jurisdiction specifically includes service operated by a common carrier by railroad or a successor operator (such as a commuter agency), but excludes rail service operated by street railways or rapid transit systems unless they are operated as a part of, or over the lines of, the general system of rail transportation.

H.R. Rep. No. 97–571, 97th Cong., 2d Sess. at 41–42 (1982). The report went on to note that "this amendment does not extend FRSA jurisdiction to rail rapid transit operations such as subways or trolley lines." *Id.*

After enactment of the 1982 Safety Act, therefore, it was clear that Congress expected FRA to assert jurisdiction over commuter operations but not over rapid transit operations unless they were connected to the general railroad system, i.e., operated as a part of, or over the lines of, that system. Rather than overturn *CTA* and direct FRA to assert authority over stand-alone rapid transit lines, Congress incorporated the basic holding of that court decision by excluding rapid transit operations that, like CTA's, did not share any trackage with the general railroad system. Although the commuter/rapid transit line was not clearly drawn, FRA knew from the legislative history that street railways, subways, and trolley lines were the kinds of operations Congress considered to be rail rapid transit. However, Congress did not incorporate the *CTA* court's distinctions about the jurisdictional relevance of types of equipment; rather, Congress clearly conferred jurisdiction even over trolleys and street railways if they were connected to the general system by virtue of operating as a part of, or over the lines of, that system.

In 1986, FRA became concerned that there could be confusion about whether

its jurisdiction would extend to certain high speed transportation systems that were being contemplated. Some would-be stand-alone systems having only incidental connections with other railroads for the delivery of cars and equipment, and others would use technologies (*e.g.*, magnetic levitation) not among those traditionally used by a railroad. Jurisdictional confusion could impede the development of such systems. FRA drafted proposed legislation to eliminate any potential confusion.

In February 1987, the Secretary of Transportation submitted to Congress the proposed rail safety reauthorization legislation that FRA had recommended and drafted. That bill included a provision that would define "railroad" in the FRSA to include all forms of nonhighway ground transportation except urban rapid transit operations not connected to the general railroad system. Commuter and other short-haul passenger operations in a metropolitan or suburban area would continue to be included. High speed systems would be included even if they used technologies (such as magnetic levitation) not traditionally associated with railroads. This provision, which provided the first definition in the railroad safety statutes of the term "railroad," incorporated the 1982 Safety Act text on commuter and other short-haul systems and the 1982 legislative history on urban rapid transit. With regard to rapid transit, the bill used the phrase "connected to" the general system as an abbreviated substitute for the 1982 legislative history's direction to exclude rapid transit systems unless "operated as a part of, or over the lines of, the general system of rail transportation." H.R. Rep. No. 97–571, 97th Cong., 2d Sess. at 41–42 (1982). The provision made clear that a connection to the general system was relevant only in determining whether an urban rapid transit operation was within FRA's jurisdiction. The bill also made clear that, in the safety statutes, "railroad" was not confined to any traditional definition of the term that limited it to certain types of technology and equipment.

With only immaterial changes, Congress enacted the provision drafted and recommended by FRA in the1988 Safety Act. This is the current definition of "railroad" codified at 49 U.S.C. 20102, set forth above. The Conference Report accompanying the 1988 Safety Act stated that the definition of "railroad" was intended to clarify the Secretary's jurisdiction in the rail safety area. *See* H.R. Rep. No. 100–637, 100th Cong., 2d Sess. at 24 (1988). The Senate Report noted that, in addition to ensuring FRA's jurisdiction over high speed rail systems and emerging technologies, the provision incorporates the 1982 language concerning commuter and other short-haul passenger service. Sen. Rep. No. 100–153, 100th Cong., 2d Sess. at 13 (1988). Shortly after passage of the 1988 Safety Act, FRA issued a statement of agency policy and interpretation, found at 49 C.F.R. Part 209, Appendix A. That statement of policy included a brief explanation of the extent and exercise of FRA's safety jurisdiction in light of the statutory amendments, noting that the only exception to that jurisdiction was for "self-contained urban rapid-transit systems." *Id.*

FRA's Policy on the Exercise of Its Safety Jurisdiction

FRA distinguishes between the extent of its statutory jurisdiction (*i.e.*, the furthest reach of its authority under the safety laws, which cover all railroads except urban rapid transit operations not connected to the general system) and its exercise of that jurisdiction (the degree to which it asserts its jurisdiction). *See* 49 CFR part 209, Appendix A. FRA believes that, based on its resource limitations and the relative degree of safety risk posed by certain operations, it makes sense in some situations to limit the exercise of its jurisdiction to something less than the entire universe of railroads that could be regulated. Thus, many of its regulations exclude operations not connected to the general railroad system, and its policies exclude certain other operations (such as insular tourist operations). However, nothing precludes FRA from subsequently expanding the reach of a regulation or policy to the maximum extent permitted by statute, or from using its emergency authority under 49 U.S.C. 20104 at any time to address imminent hazards involving death or personal injury arising in operations otherwise excluded from its exercise of jurisdiction.

FRA currently exercises jurisdiction over all railroad passenger operations in the nation except: (1) Urban rapid transit operations not operated on or over the general railroad system; and (2) tourist, scenic, or excursion operations that are not operated on or over the general system and are insular. Thus, in addition to intercity passenger service, FRA exercises jurisdiction over all commuter operations (whether or not connected to other railroads in the general system), all tourist operations operated on or over the general system and those off the general system that are not insular, and all other passenger operations that are operated on or over the general system. FRA will assert jurisdiction over high speed intercity rail service even if completely separated from the general railroad system that now exists and magnetic levitation systems that are not urban rapid transit.

Some current and planned passenger operations in metropolitan areas are often referred to as "light rail." In the transit industry, this term usually refers to lightweight passenger cars operating on rails in a right-of-way that is not separated from other traffic, such as street railways and trolleys. "Heavy rail" generally refers to cars operating on rails that are in separate rights-of-way from which all other vehicular traffic is excluded. In transit terms, heavy rail is also known as "rapid rail," "subway," or "elevated railway." Conventional rail equipment such as that used by freight railroads, Amtrak, and many commuter railroads is different from, and considerably heavier and structurally stronger than, either light or heavy rail equipment, as those terms are used in the transit industry. Although this equipment is sometimes referred to as "heavy" rail, we will use the term "conventional" to avoid confusion between the different ways "heavy" is used in the transit and general railroad communities. The greatest risk inherent in the shared use of the trackage is a collision between the light rail equipment and conventional equipment. The light rail vehicles are not designed to withstand such a collision with far heavier equipment. Were such a crash to occur with either or both trains operating at high speeds, the results for passengers in the light rail vehicle could be catastrophic. (Mixing of heavy rail transit and conventional railroad operations is not likely, but would present most of the same concerns associated with light rail. Those concerns could be more or less acute, depending on operating speeds and other factors. Although heavy rail transit is not directly addressed in this notice, FRA would expect to apply similar principles to such a shared use situation.)

Rapid transit operations may involve use of either light or heavy transit equipment. However, it is the nature and location of the operation, not the nature of the equipment, that determines whether FRA has jurisdiction under the safety statutes. The sole statutory exception is for "rapid transit operations in an urban area that are not connected to the general railroad system of transportation." 49 U.S.C. 20102. The first jurisdictional question is whether the operations are in the nature of rapid

transit. If the operation is a commuter railroad, FRA has jurisdiction regardless of its connection to other railroads, and in fact considers the operation itself to be part of the general railroad system. To assist in making these determinations, FRA has devised definitions of "commuter" and "rapid transit" operations, which are set forth below in the proposed revision to its statement of policy in 49 CFR part 209, appendix A. If the operation is rapid transit, the next question is whether it is connected to the general railroad system. If so, FRA has jurisdiction despite the rapid transit nature of the system. As explained fully below, however, in the revisions to its published statement of policy, FRA considers some connections to the general system to be insufficient to warrant exercise of its jurisdiction over a transit operation. Moreover, FRA intends to exercise jurisdiction over a transit operation that does have significant connections to the general system only to the extent it is connected, not over the entire transit system.

Only two light rail operations (in San Diego and Baltimore) currently share trackage with conventional equipment. In exercising jurisdiction over these lines jointly used by light rail and a freight railroad, FRA has made specific accommodations for the differences in equipment and operations that distinguish these systems from more conventional intercity or commuter operations. We have generally addressed these joint use arrangements by exercising jurisdiction over just those elements of the system also used by the freight line, such as the track, signals, grade crossing warning devices, and dispatching. The leading example is the San Diego Trolley line. FRA has not actively exercised jurisdiction over the time-separated passenger operations on the freight line or over any aspects of the trolley's operation on its separate street trackage. There, the fact that the passenger operations are completely separated in time from the limited period during which freight operations occur was very persuasive in FRA's policy determination not to exercise its jurisdiction more aggressively.

Of course, most of FRA's regulations apply on their face to all railroads that operate on the general railroad system (as do the light rail lines in San Diego and Baltimore). In the absence of a waiver, these rules technically apply. As a policy matter, FRA has decided, up to this point, not to insist on the filing of waiver applications for the time-separated light rail operations. However, various factors call for a more clearly defined policy with regard to light rail operations on the general system. First, the number of such operations being planned is increasing quickly across the nation. The informal arrangements currently in place for the two current operations will not suffice for a wide variety of light rail operations in many locations.

Second, FRA's recent issuance of two rules (passenger train emergency preparedness and passenger equipment) dealing directly with passenger operations makes it imperative that all current or planned passenger operations to which those rules would apply have a plan for either complying with the rules or seeking a waiver from them. For example, in issuing its passenger equipment rules (49 CFR part 238) in May 1999, FRA made clear that they will apply to light rail operations on the general system, encouraged the filing of waiver applications as early as possible, and noted that the two light rail shared use operations currently in existence were covered by the rule, subject to an appropriate period of consultation and adjustment. 64 FR 25543–25544. It is clear that light rail equipment will not meet many of the passenger equipment standards, such as the 800,000 pound buff strength requirement. In that regard, FRA stated: "Light rail operators will have to seek a waiver of the requirement and will have to plan their operations in such a way as to maximize the likelihood of obtaining such a waiver." *Id.* at 25545.

Finally, from the point of view of regulatory compliance at the Federal and State levels, rail transit operators can presumably benefit from a comprehensive summary of what standards and procedures apply. This will assist in governing current conduct as well as aiding planners of such operations.

FRA's existing published statement of agency policy (49 CFR part 209, Appendix A) does not address light rail operations on the general system. Revising that published statement will provide timely guidance, especially in light of the number of joint use passenger/freight operations currently under development or being contemplated. The proposed changes to Appendix A are shown at the end of this document.

Waiver Petitions Concerning Shared Use of the General System by Light Rail and Other Railroads

Light rail operators who intend to share use of the general railroad system with conventional equipment will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. By statute, FRA may grant a waiver of any rule or order if the waiver "is in the public interest and consistent with railroad safety." 49 U.S.C. 20103(d). Waiver petitions are reviewed by FRA's Railroad Safety Board (the "Safety Board") under the provisions of 49 CFR Part 211. Waiver petitions must contain the information required by 49 CFR 211.9. The Safety Board can, in granting a waiver, impose any conditions it concludes are necessary to assure safety or are in the public interest. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

FRA asks that the light rail operator and all other affected railroads jointly file a Petition for Approval of Shared Use. Like all waiver petitions, a Petition for Approval of Shared Use will be reviewed by the Safety Board. FTA will appoint a non-voting liaison to the Safety Board, and that person will participate in the Safety Board's consideration of all such petitions. This close cooperation between the two agencies will ensure that FRA benefits from the insights, particularly with regard to operational and financial issues, that FTA can provide about light rail operations, as well as from FTA's knowledge of and contacts with state safety oversight programs. This working relationship will also ensure that FTA has a fuller appreciation of the safety issues involved in each specific shared use operation and a voice in shaping the safety requirements that will apply to such operations.

In general, the greater the safety risks inherent in a proposed operation the greater will be the mitigation measures required. It is the intention of FTA and FRA to maintain the level of safety typical of conventional rail passenger operations while accommodating the character and needs of light rail transit operations.

General Factors To Address in a Petition for Approval of Shared Use

FRA resolves each waiver request on its own merits based on the information presented and the agency's own investigation of the issues. While FRA cannot state in advance what kinds of waivers will be granted or denied, we can provide guidance to those who may likely be requesting waivers to help ensure that their petitions address factors that FRA will no doubt consider important.

FRA's procedural rules give a general description of what any waiver petition should contain, including an explanation of the nature and extent of

the relief sought; a description of the persons, equipment, installations, and locations to be covered by the waiver; an evaluation of expected costs and benefits; and relevant safety data. 49 CFR 211.9. The procedural rules, of course, are not specifically tailored to situations involving light rail operations over the general system, where waiver petitions are likely to involve many of FRA's regulatory areas. In such situations, FRA suggests that a Petition for Approval of Shared Use address the following general factors.

Description of operations. Explain the frequency and speeds of all operations on the line and the nature of the different operations. Explain the nature of any connections between the light rail and conventional operations.

- If the light rail line will operate on any segments that are not part of the general railroad system (*e.g.*, a street railway portion), describe those segments and their connection with the general system segments. In such situations, explain, using the criteria of this statement of policy, whether the light rail operation is, in the petitioner's view, a commuter operation or urban rapid transit. The petition need not address the commuter/rapid transit issue if the light rail operations will be conducted entirely as part of or over the lines of the general system.
- If the light rail and conventional operations will share any trackage, describe precisely what the respective hours of operation will be for each type of equipment. If light rail and conventional operations will occur only at different times of day, describe what means of protection will ensure that the different types of equipment are not operated simultaneously on the same track, and how protection will be provided to ensure that, where one set of operations begins and the other ends, there can be no overlap that would possibly result in a collision.
- If the light rail and conventional operations will share trackage during the same time periods, the petitioners will face a steep burden of demonstrating that extraordinary safety measures will be taken to adequately reduce the likelihood and/or severity of a collision between conventional and light rail equipment to the point where the safety risks associated with joint use would be acceptable. Explain the nature of such simultaneous joint use. Describe the system of train control, the frequency and proximity of both types of operations, and all methods that would be used to prevent collisions. Include a quantitative risk assessment concerning the risk of collision between the light rail and conventional equipment under the proposed operating scenario.

Description of Equipment. Describe all equipment that will be used by the light rail and conventional operations. Where the light rail equipment does not meet the standards of 49 CFR part 238, provide specifics on the crash survivability of the light rail equipment, such as static end strength, sill height, strength of corner posts and collision posts, side strength, etc.

Given the structural incompatibility of light rail and conventional equipment, FRA has grave concerns about the prospect of operating these two types of equipment simultaneously on the same track. If the light rail and conventional operations will share trackage during the same time periods, provide an engineering analysis of the light rail equipment's resistance to damage in various types of collisions, including a worst case scenario involving a failure of the collision avoidance systems resulting in a collision between light rail and conventional equipment at track speeds.

Alternative safety measures to be employed in place of each rule for which waiver is sought. The petition should specify exactly which rules the petitioner desires to be waived. For each rule, the petition should explain exactly how a level of safety at least equal to that afforded by the FRA rule will be provided by the alternative measures the petitioner proposes.

Most light rail operations that entail some shared use of the general system will also have segments that are not on the general system. FTA's rules on rail fixed guideway systems will probably apply to those other segments. If so, the petition for waiver of FRA's rules should explain how the system safety program plan adopted under FTA's rules may affect safety on the portions of the system where FRA's rules apply. Under certain circumstances, effective implementation of such a plan may provide FRA sufficient assurance that adequate measures are in place to warrant waiver of certain FRA rules. In its petition, the light rail operator may want to certify that the subject matter addressed by the rule to be waived is addressed by the system safety plan and that the light rail operation will be monitored by the state safety oversight program. That is likely to expedite FRA's processing of the petition. FRA will analyze information submitted by the petitioner to demonstrate that a safety matter is addressed by the light rail operator's system safety plan. Alternately, conditional approval may be requested at an early stage in the project, and FRA would thereafter review the system safety program plan's status to determine readiness to commence operations. Where FRA grants a waiver, the state agency will oversee the area addressed by the waiver, but FRA will actively participate in partnership with FTA and the state agency to address any safety problems.

Factors to Address Related To Specific Regulations and Statutes

Operators of light rail systems are likely to apply for waivers of many FRA rules. FRA offers the following suggestions on factors petitioners may want to address concerning specific areas of regulation. (All "part" references are to title 49 CFR.) Parts 209 (Railroad Safety Enforcement Procedures), 211 (Rules of Practice), 212 (State Safety Participation), and 216 (Special Notice and Emergency Order Procedures) are largely procedural rules that are unlikely to be the subject of waivers, so those parts are not discussed further.

Track, Structures, and Signals

Track Safety Standards (Part 213)

For segments of a light rail line not involving operations over the general system, assuming the light rail operation meets the definition of "rapid transit," the track safety standards do not apply. However, for general system track used by both the conventional and light rail lines, the standards apply and a waiver is very unlikely. A light rail operation that owns track over which the conventional railroad operates may wish to consider assigning responsibility for that track to the other railroad. If so, the track owner must follow the procedure set forth in 49 CFR 213.5(c). Where such an assignment occurs, the owner and assignee are responsible for compliance.

Signal Systems Reporting Requirements (Part 233)

This part contains reporting requirements with respect to methods of train operation, block signal systems, interlockings, traffic control systems, automatic train stop, train control, and cab signal systems, or other similar appliances, methods, and systems. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of "rapid transit," the reporting requirements of this part do not apply. However, if a signal system failure occurs on general system track which is used by both conventional and light rail lines, and triggers the reporting requirements of this part, the light rail

operator must file, or cooperate fully in the filing of, a signal system report. The petition should explain whether the light rail operator or conventional railroad is responsible for maintaining the signal system. Assuming that the light rail operator (or a contractor hired by this operator) has responsibility for maintaining the signal system, that entity is the logical choice to file each signal failure report, and a waiver is very unlikely. Moreover, since a signal failure first observed by a light rail operator can later have catastrophic consequences for a conventional railroad using the same track, a waiver would jeopardize rail safety on that general system trackage. Even if the conventional railroad is responsible for maintaining the signal systems, the light rail operator must still assist the railroad in reporting all signal failures by notifying the conventional railroad of such failures.

Grade Crossing Signal System Safety (Part 234)

This part contains minimum standards for the maintenance, inspection, and testing of highway-rail grade crossing warning systems, and also prescribes standards for the reporting of system failures and minimum actions that railroads must take when such warning systems malfunction. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of "rapid transit," the reporting requirements of this part do not apply. However, if a grade crossing accident or warning activation failure occurs on general system track which is used by both conventional and light rail lines, and triggers the reporting requirements of this part, the light rail operator must file, or cooperate to ensure the filing of, a report to FRA within 24 hours of such an accident or a grade crossing signal system failure report concerning any failure that occurs during its operations. The petition should explain whether the light rail operator or conventional railroad is responsible for maintaining the grade crossing devices. Assuming that the light rail operator (or a contractor hired by this operator) has responsibility for maintaining the grade crossing devices, that entity is the logical choice to file each grade crossing signal failure report, and a waiver is very unlikely. Moreover, since a grade crossing warning device failure first observed by a light rail operator can later have catastrophic consequences for a conventional railroad using the same track, a waiver would jeopardize rail safety on that general system trackage. However, if the conventional railroad is responsible for maintaining the grade crossing devices, the light rail operator will still have to assist the railroad in reporting all grade crossing signal failures. Moreover, regardless of which railroad is responsible for maintenance of the grade crossing signals, any railroad (including a light rail operation) operating over a crossing that has experienced an activation failure, partial activation, or false activation must take the steps required by this rule to ensure safety at those locations. While the maintaining railroad will retain all of its responsibilities in such situations (such as contacting train crews and notifying law enforcement agencies), the operating railroad must observe requirements concerning flagging, train speed, and use of the locomotive's audible warning device.

Approval of Signal System Modifications (Part 235)

This part contains instructions governing applications for approval of a discontinuance or material modification of a signal system or relief from the regulatory requirements of part 236. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of "rapid transit," the application requirements of this part do not apply, and no waiver would be necessary. In the case of a signal system located on general system track which is used by both conventional and light rail lines, a light rail operation is subject to this part only if it (or a contractor hired by the operator) owns or has responsibility for maintaining the signal system. If the conventional railroad does the maintenance, then that railroad would file any application submitted under this part; the light rail operation would have the right to protest the application under § 235.20. The petition should discuss whether the light rail operator or conventional railroad is responsible for maintaining the signal system.

Standards for Signal and Train Control Systems (Part 236)

This part contains rules, standards, and instructions governing the installation, inspection, maintenance, and repair of signal and train control systems, devices, and appliances. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of "rapid transit," the requirements of this part do not apply, and no waiver would be necessary. In the case of a signal system located on general system track which is used by both conventional and light rail lines, a light rail operation is subject to this part only if it (or a contractor hired by the operation) owns or has responsibility for installing, inspecting, maintaining, and repairing the signal system. If the light rail operation has these responsibilities, a waiver would be unlikely because a signal failure would jeopardize the safety of both the light rail operation and the conventional railroad. If the conventional railroad assumes all of the responsibilities under this part, the light rail operation would not need a waiver, but it would have to abide by all operational limitations imposed on this part and by the conventional railroad. The petition should discuss whether the light rail operator or conventional railroad has responsibility for installing, inspecting, maintaining, and repairing the signal system.

Motive Power and Equipment

Railroad Noise Emission Compliance Regulations (Part 210)

If the light rail equipment would normally meet the standards in this rule, there would be little reason to seek a waiver of it. This part has an exception for "street, suburban, or interurban electric railways unless operated as a part of the general railroad system of transportation." 49 CFR 210.3(b)(2). The petition should address whether this exception may apply to the light rail operation. The greater the integration of the light rail and conventional operations, the less likely this exception would apply. If it appears that the light rail system would neither meet the standards nor fit within the exception, the petition should address noise mitigation measures used on the system, especially as part of a system safety program.

Railroad Freight Car Safety Standards (Part 215)

A light rail operator is likely to move freight cars only in connection with maintenance-of-way work. As long as such cars are properly stenciled in accordance with section 215.305, this part does not otherwise apply, and a waiver would seem unnecessary.

Rear End Marking Devices (Part 221)

This part requires that each train occupying or operating on main line track be equipped with a display on the trailing end of the rear car of that train, and continuously illuminate or flash a marking device. The device, which must be approved by FRA, must have specific intensity, beam arc width, color, and flash rate characteristics. A light rail operation seeking a waiver of this part will need to explain how other marking

devices with which it equips its vehicles, or other means such as train control, will provide the same assurances as this part of a reduced likelihood of collisions attributable to the inconspicuity of the rear end of a leading train. The petition should describe the light rail vehicle's existing marking devices (*e.g.*, headlights, brakelights, taillights, turn signal lights), and indicate whether the vehicle contains reflectors. If the light rail system will operate in both a conventional railroad environment and in streets mixed with motor vehicles, the petition should discuss whether adapting the design of the vehicle's lighting characteristics to conform to FRA's regulations would adversely affect the safety of its operations in the street environment. A light rail system that has a system safety program developed under FTA's rules may choose to discuss how that program addresses the need for equivalent levels of safety when its vehicles operate on conventional railroad corridors.

Safety Glazing Standards (Part 223)

This part provides that passenger car windows be equipped with FRA-certified glazing materials in order to reduce the likelihood of injury to railroad employees and passengers from the breakage and shattering of windows and avoid ejection of passengers from the vehicle in a collision. This part, in addition to requiring the existence of at least four emergency windows, also requires window markings and operating instructions for each emergency window, as well as for each window intended for emergency access, so as to provide the necessary information for evacuation of a passenger car. FRA will not permit operations to occur on the general system in the absence of effective alternatives to the requirements of this part that provide an equivalent level of safety. The petition should explain what equivalent safeguards are in place to provide the same assurance as part 223 that passengers and crewmembers are safe from the effects of objects striking a light rail vehicle's windows. The petition should also discuss the design characteristics of its equipment when it explains how the safety of its employees and passengers will be assured during an evacuation in the absence of windows meeting the specific requirements of this part. A light rail system that has a system safety program plan developed under FTA's rule may be able to demonstrate that the plan satisfies the safety goals of this part.

Locomotive Safety Standards (Part 229)

This part contains minimum safety standards for all locomotives, except those propelled by steam power. FRA recognizes that due to the unique characteristics of light rail equipment, some of these provisions may be irrelevant to light rail equipment, and that others may not fit properly in the context of light rail operations. To the extent that the light rail operation encompasses the safety risks addressed by the provisions of this part, a waiver petition should explain precisely how the light rail system's practices will provide for the safe condition and operation of its locomotive equipment. In order to reduce the risk of grade crossing accidents, it is important that all locomotives used by both conventional railroads and light rail systems present the same distinctive profile to motor vehicle operators approaching grade crossings. If uniformity is sacrificed by permitting light rail systems to operate locomotives with varying levels of illumination, or with lights placed in different locations on the equipment, safety could be compromised. Accordingly, although light rail headlights are likely to be of lower candela, the vehicle design should maintain the triangular pattern required of other locomotives and cab cars to the extent practicable.

Safety Appliance Laws (49 U.S.C. 20301–20305)

Since certain safety appliance requirements (*e.g.*, automatic couplers) are statutory, they can only be "waived" by FRA under the exemption conditions set forth in 49 U.S.C. 20306. Because exemptions requested under this statutory provision do not involve a waiver of a safety rule, regulation, or standard (see 49 CFR 211.41), FRA is not required to follow the rules of practice for waivers contained in part 211. However, whenever appropriate, FRA will combine its consideration of any request for an exemption under § 20306 with its review under part 211 of a light rail operation's petition for waivers of FRA's regulations.

FRA may grant exemptions from the statutory safety appliance requirements in 49 U.S.C. 20301–20305 only if application of such requirements would "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations." 49 U.S.C. 20306. The exemption for technological improvements was originally enacted to further the implementation of a specific type of freight car, but the legislative history shows that Congress intended the exemption to be used elsewhere so that "other types of railroad equipment might similarly benefit." S. Rep. 96–614 at 8 (1980), reprinted in 1980 U.S.C.C.A.N. 1156,1164.

FRA recognizes the potential public benefits of allowing light rail systems to take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right-of-way, would be prohibitively expensive. Any petitioner requesting an exemption for technological improvements should carefully explain how being forced to comply with the existing statutory safety appliance requirements would conflict with the exemption exceptions set forth at 49 U.S.C. 20306. The petition should also show that granting the exemption is in the public interest and is consistent with assuring the safety of the light rail operator's employees and passengers.

Safety Appliance Standards (Part 231)

The regulations in this part specify the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances (*e.g.*, handbrakes, ladders, handholds, steps), and directly implement a number of the statutory requirements found in 49 U.S.C. 20301–20305. These very detailed regulations are intended to ensure that sufficient safety appliances are available and able to function safely and securely as intended.

FRA recognizes that due to the unique characteristics of light rail equipment, some of these provisions may be irrelevant to light rail operation, and that others may not fit properly in the context of light rail operations (*e.g.*, crewmembers typically do not perform yard duties from positions outside and adjacent to the light rail vehicle or near the vehicle's doors). However, to the extent that the light rail operation encompasses the safety risks addressed by the regulatory provisions of this part, a waiver petition should explain precisely how the light rail system's practices will provide for the safe operation of its passenger equipment. The petition should focus on the design specifications of the equipment, and explain how the light rail system's operating practices, and its intended use of the equipment, will satisfy the safety purpose of the regulations while providing at least an equivalent level of safety.

Passenger Equipment Safety Standards (Part 238)

This part prescribes minimum Federal safety standards for railroad passenger

equipment. Since a collision on the general railroad system between light rail equipment and conventional rail equipment could prove catastrophic, because of the significantly greater mass and structural strength of the conventional equipment, a waiver petition should describe the light rail operation's system safety program that is in place to minimize the risk of such a collision. The petition should discuss the light rail operation's operating rules and procedures, train control technology, and signal system. If the light rail operator and conventional railroad will operate simultaneously on the same track, the petition should include a quantitative risk assessment that incorporates design information and provide an engineering analysis of the light rail equipment and its likely performance in derailment and collision scenarios. The petitioner should also demonstrate that risk mitigation measures to avoid the possibility of collisions, or to limit the speed at which a collision might occur might occur, will be employed in connection with the use of the equipment on a specified shared-use rail line. This part also contains requirements concerning power brakes on passenger trains, and a petitioner seeking a waiver in this area should refer to these requirements, not those found in 49 CFR part 232.

Operating Practices

Railroad Workplace Safety (Part 214)

This part contains standards for protecting bridge workers and roadway workers. The petition should explain whether the light rail operator or conventional railroad is responsible for bridge work on shared general system trackage. If the light rail operator does the work and does similar work on segments outside of the general system, it may wish to seek a waiver permitting it to observe OSHA standards throughout its system.

There are no comparable OSHA standards protecting roadway workers. The petition should explain which operator is responsible for track and signal work on the shared segments. If the light rail operator does this work, the petition should explain how the light rail operator protects these workers. However, to the extent that protection varies significantly from FRA's rules, a waiver permitting use of the light rail system's standards could be very confusing to train crews of the conventional railroad who follow FRA's rules elsewhere. A waiver of this rule is unlikely. A petition should address how such confusion would be avoided and safety of roadway workers would be ensured.

Railroad Operating Rules (part 217)

This part requires filing of a railroad's operating rules and that employees be instructed and tested on compliance with them. A light rail operation would not likely have difficulty complying with this part. However, if a waiver is desired, the light rail system will need to explain how other safeguards it has in place provide the same assurance that operating employees are trained and periodically tested on the rules that govern train operation. A light rail system that has a system safety program plan developed under FTA's rules may be in a good position to give such an assurance.

Railroad Operating Practices (Part 218)

This part requires railroads to follow certain practices in various aspects of their operations (protection of employees working on equipment, protection of trains and locomotives from collisions in certain situations, prohibition against tampering with safety devices, protection of occupied camp cars). Some of these provisions (*e.g.*, camp cars) may be irrelevant to light rail operations. Others may not fit well in the context of light rail operations. To the extent the light rail operation presents the risks addressed by the various provisions of this part, a waiver provision should explain precisely how the light rail system's practices will address those risks. FRA is not likely to waive the prohibition against tampering with safety devices, which would seem to present no particular burden to light rail operations. Moreover, blue signal regulations, which protect employees working on or near equipment, are not likely to be waived to the extent that such work is performed on track shared by a light rail operation and a conventional railroad, where safety may best be served by uniformity.

Control of Alcohol and Drug Use (Part 219)

FRA will not permit operations to occur on the general system in the absence of effective rules governing alcohol and drug use by operating employees. FTA's own rules may provide a suitable alternative for a light rail system that is otherwise governed by those rules. However, to the extent that light rail and conventional operations occur simultaneously on the same track, FRA is not likely to apply different rules to the two operations, particularly with respect to post-accident testing, for which FRA requirements are more extensive.

Railroad Communications (Part 220)

A light rail operation is likely to have an effective system of radio communication that may provide a suitable alternative to FRA's rules. However, the greater the need for radio communication between light rail personnel (*e.g.*, train crews or dispatchers) and personnel of the conventional railroad (*e.g.*, train crews, roadway workers), the greater will be the need for standardized communication rules and, accordingly, the less likely will be a waiver.

Railroad Accident/Incident Reporting (Part 225)

FRA's accident/incident information is very important in the agency's decisionmaking on regulatory issues and strategic planning. A waiver petition should indicate precisely what types of accidents and incidents it would report, and to whom, under any alternative it proposes. FRA is not likely to waive its reporting requirements concerning train accidents or highway-rail grade crossing collisions that occur on the general railroad system. Reporting of accidents under FTA's rules is quite different and would not provide an effective substitute. However, with regard to employee injuries, the light rail operation may, absent FRA's rules, otherwise be subject to reporting requirements of FTA and OSHA and may have an interest in uniform reporting of those injuries wherever they occur on the system. Therefore, it is more likely that FRA would grant a waiver with regard to reporting of employee injuries.

Hours of Service Laws (49 U.S.C. 21101–21108)

The hours of service laws apply to all railroads subject to FRA's jurisdiction, and govern the maximum work hours and minimum off-duty periods of employees engaged in one or more of the three categories of covered service described in 49 U.S.C. 21101. If an individual performs more than one kind of covered service during a tour of duty, then the most restrictive of the applicable limitations control. Under current law, a light rail operation could request a waiver of the substantive provisions of the hours of service laws only under the "pilot project" provision described in 49 U.S.C. 21108, provided that the request is based upon a joint petition submitted by the railroad and its affected labor organizations. Because waivers requested under this statutory provision do not involve a waiver of a

safety rule, regulation, or standard (see 49 CFR 211.41), FRA is not required to follow the rules of practice for waivers contained in part 211. However, whenever appropriate, FRA will combine its consideration of any request for a waiver under § 21108 with its review under part 211 of a light rail operation's petition for waivers of FRA's regulations.

If such a statutory waiver is desired, the light rail system will need to assure FRA that the waiver of compliance is in the public interest and consistent with railroad safety. The waiver petition should include a discussion of what fatigue management strategies will be in place for each category of covered employees in order to minimize the effects of fatigue on their job performance. However, FRA is unlikely to grant a statutory waiver covering employees of a light rail operation who dispatch the trains of a conventional railroad or maintain a signal system affecting shared use trackage.

Hours of Service Recordkeeping (Part 228)

This part prescribes reporting and recordkeeping requirements with respect to the hours of service of employees who perform the job functions set forth in 49 U.S.C. 21101. As a general rule, FRA anticipates that any waivers granted under this part will only exempt the same groups of employees for whom a light rail system has obtained a waiver of the substantive provisions of the hours of service laws under 49 U.S.C. 21108. Since it is important that FRA be able to verify that a light rail operation is complying with the on- and off-duty restrictions of the hour of service laws for all employees not covered by a waiver of the laws' substantive provisions, it is unlikely that any waiver granted of the reporting and recordkeeping requirements would exclude those employees. However, in a system with fixed work schedules that do not approach 12 hours on duty in the aggregate, it may be possible to utilize existing payroll records to verify compliance.

Passenger Train Emergency Preparedness (Part 239)

This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. FRA's expectation is that by requiring affected railroads to provide sufficient emergency egress capability and information to passengers, along with mandating that these railroads coordinate with local emergency response officials, the risk of death or injury from accidents and incidents will be lessened. A waiver petition should state whether the light rail system has an emergency preparedness plan in place under a state system safety program developed under FTA's rules for the light rail operator's separate street railway segments. Under a system safety program, a light rail operation is likely to have an effective plan for dealing with emergency situations that may provide an equivalent alternative to FRA's rules. To the extent that the light rail operation's plan relates to the various provisions of this part, a waiver petition should explain precisely how each of the requirements of this part is being addressed. The petition should especially focus on the issues of communication, employee training, passenger information, liaison relationships with emergency responders, and marking of emergency exits.

Qualification and Certification of Locomotive Engineers (Part 240)

This part contains minimum Federal safety requirements for the eligibility, training, testing, certification, and monitoring of locomotive engineers. Those who operate light rail trains may have significant effects on the safety of light rail passengers, motorists at grade crossings, and, to the extent trackage is shared with conventional railroads, the employees and passengers of those railroads. The petition should describe whether a light rail system has a system safety plan developed under FTA's rules that is likely to have an effective means of assuring that the operators, or "engineers," of its equipment receive the necessary training and have proper skills to operate a light rail vehicle in shared use on the general railroad system. The petition should explain what safeguards are in place to ensure that light rail engineers receive at least an equivalent level of training, testing, and monitoring on the rules governing train operations to that received by locomotive engineers employed by conventional railroads.

Waivers That May be Appropriate for Time-Separated Light Rail Operations

The foregoing discussion of factors to address in a petition for approval of shared use concerns all such petitions and, accordingly, is quite general. FRA is willing to provide more specific guidance on where waivers may be likely with regard to light rail operations that are time-separated from conventional operations. FRA's greatest concern with regard to shared use of the general system is a collision between light rail and conventional trains on the same track. Because the results could well be catastrophic, FRA places great emphasis on avoiding such collisions. The surest way to guarantee that such collisions will not occur is to strictly segregate light rail and conventional operations by time of day so that the two types of equipment never share the same track at the same time. This is not to say that FRA will not entertain waiver petitions that rely on other methods of collision avoidance such as sophisticated train control systems. However, petitioners who do not intend to separate light rail from conventional operations by time of day will face a very steep burden of demonstrating an acceptable level of safety. FRA does not insist that all risk of collision be eliminated. However, given the enormous severity of the likely consequences of a collision, the demonstrated risk of such an event must be extremely remote.

There are various ways of providing such strict separation by time. For example, freight operations could be limited to the hours of midnight to 5 a.m. when light rail operations are prohibited. Or, there might be both a nighttime and a mid-day window for freight operation. The important thing is that the arrangement not permit simultaneous operation on the same track by clearly defining specific segments of the day when only one type of operation may occur. Mere spacing of train movements by a train control system does not constitute this temporal separation.

FRA is very likely to grant waivers of many of its rules where complete temporal separation between light rail and conventional operations is demonstrated in the waiver request. The chart below, which differs only slightly from the one published in the joint FRA/FTA policy statement issued in May 1999, lists each of FRA's railroad safety rules and provides FRA's early thinking on whether the operator of a light rail system that shares trackage with a conventional railroad should expect to comply with the rule on the shared track or may receive a waiver. This chart assumes that the operations of the local rail transit agency on the general railroad system are completely separated in time from conventional railroad operations, and that the light rail operation poses no atypical safety hazards. FRA's procedural rules on matters such as enforcement (49 CFR parts 209 and 216), and its statutory authority to take emergency action to address an imminent hazard of death or

injury, would apply to these operations in all cases.

Where waivers are granted, a light rail operator would be expected to operate under a system safety plan developed in accordance with the FTA state safety oversight program. The state safety oversight agency would be responsible for the safety oversight of the light rail operation, even on the general system, with regard to aspects of that operation for which a waiver is granted. FRA will actively participate in partnership with the state agency to address any safety problems. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

TIME-SEPARATED LIGHT RAIL OPERATIONS: POSSIBLE WAIVERS

Title 49 CFR part	Subject of rule	Likely treatment	Comments
	Track, Structures, and Signals		
213	Track Safety Standards	Comply (assuming light rail operator owns track or has been assigned responsibility for it).	If the conventional RR owns the track, light rail will have to observe speed limits for class of track.
233, 235, 236.	Signal and train control	Comply (assuming light rail operator or its contractor has responsibility for signal maintenance).	If conventional RR maintains signals, light rail will have to abide by operational limitations and report signal failures.
234	Grade Crossing Signals	Comply (assuming light rail operator or its contractor has responsibility for crossing devices).	If conventional RR maintains devices, light rail will have to comply with sections concerning activation failures and false activations.
213, Appendix C.	Bridge safety policy	Not a rule. Compliance voluntary	
	Motive Power and Equipment		
210	Noise emission	Waive	State safety oversight.
215	Freight car safety standards	Waive	State safety oversight.
221	Rear end marking devices	Waive	State safety oversight.
223	Safety glazing standards	Waive	State safety oversight.
229	Locomotive safety standards	Waive, except perhaps for alerting lights, which are important for grade crossing safety.	State safety oversight.
231*	Safety appliance standards	Waive	State safety oversight; see note below on statutory requirements.
238	Passenger equipment standards	Waive	State safety oversight.
	Operating Practices		
214	Bridge Worker	Waive	OSHA standards.
214	Roadway Worker Safety	Comply	
217	Operating Rules	Waive	State safety oversight.
218	Operating Practices	Waive, except for prohibition on tampering with safety devices related to signal system, and blue signal rules on shared track.	State safety oversight.
219	Alcohol and Drug	Waive if FTA rule otherwise applies	FTA rule may apply.
220	Radio communications	Waive, except to extent communications with freight trains and roadway workers are necessary.	State safety oversight.
225	Accident reporting and investigation	Comply with regard to train accidents and crossing accidents; waive as to injuries.	Employee injuries would be reported under FTA or OSHA rules.
228**	Hours of service recordkeeping	Waive (in concert with waiver of statute); waiver not likely for personnel who dispatch conventional RR or maintain signal system on shared use track.	See note below on possible waiver of statutory requirements.
239	Passenger train emergency preparedness	Waive	State safety oversight.
240	Engineer certification	Waive	State safety oversight.

*Certain safety appliance requirements (*e.g.*, automatic couplers) are statutory and can only be waived under the conditions set forth in 49 U.S.C. 20306, which permits exemptions if application of the requirements would "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations." If consistent with employee safety, FRA could probably rely on this provision to address most light rail equipment that could not meet the standards.

**Currently, 49 U.S.C. 21108 permits FRA to waive substantive provisions of the hours of service laws based upon a joint petition by the railroad and affected labor organizations, after notice and an opportunity for a hearing. This is a "pilot project" provision, so waivers are limited to two years but may be extended for additional two-year periods after notice and an opportunity for comment.

In light of the foregoing, FRA proposes to amend its published statement of agency policy in the manner explained below.

List of Subjects in 49 CFR Part 209

Railroad safety, Reporting and recordkeeping requirements.

The Proposed Policy Statement

In consideration of the foregoing, 49 CFR part 209 is amended as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20114, and 49 CFR 1.49.

2. Appendix A to 49 CFR part 209 is amended as follows.

A. Under the heading "The Extent and Exercise of FRA's Safety Jurisdiction," the seventh paragraph (which begins, "For example, all of FRA's regulations") is removed, and the following paragraphs are added in its place:

Appendix A to Part 209—Interim Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

* * * * *

For example, all of FRA's regulations exclude from their reach railroads whose entire operations are confined to an industrial installation (*i.e.*, "plant railroads"), such as those in steel mills that do not go beyond the plant's boundaries. *E.g.*, 49 CFR 225.3(a)(1) (accident reporting regulations). Other regulations exclude not only plant railroads but all other railroads that are not operated as a part of, or over the lines of, the general railroad system of transportation. *E.g.*, 49 CFR 214.3 (railroad workplace safety). By "general railroad system of transportation," FRA refers to the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas. Much of this network is interconnected, so that a rail vehicle can travel across the nation without leaving the system. However, mere physical connection to the system does not bring trackage within it. For example, trackage within an industrial installation that is connected to the network only by a switch for the receipt of shipments over the system is not a part of the system.

Moreover, portions of the network may lack a physical connection but still be part of the system by virtue of the nature of operations that take place there. For example, the Alaska Railroad is not physically connected to the rest of the general system but is part of it. The Alaska Railroad exchanges freight cars with other railroads by car float and exchanges passengers with interstate carriers as part of the general flow of interstate commerce. Similarly, an intercity high speed rail system with its own right of way would be part of the general system although not physically connected to it. The presence on a rail line of any of these types of railroad operations is a sure indication that such trackage is part of the general system: the movement of freight cars in trains outside the confines of an industrial installation, the movement of intercity passenger trains, or the movement of commuter trains within a metropolitan or suburban area. Urban rapid transit operations are ordinarily not part of the general system, but may have sufficient connections to that system to warrant exercise of FRA's jurisdiction (*see* discussion of passenger operations, below). Tourist railroad operations are not inherently part of the general system and, unless operated over the lines of that system, are subject to few of FRA's regulations.

The boundaries of the general system are not static. For example, a portion of the system may be purchased for the exclusive use of a single private entity and all connections, save perhaps a switch for receiving shipments, severed. Depending on the nature of the operations, this could remove that portion from the general system. The system may also grow, as with the establishment of intercity service on a brand new line. However, the same trackage cannot be both inside and outside of the general system depending upon the time of day. If trackage is part of the general system, restricting a certain type of traffic over that trackage to a particular portion of the day does not change the nature of the line—it remains the general system.

* * * * *

B. Appendix A to 49 CFR part 209 is further amended by adding the following paragraphs immediately before the section called "Extraordinary Remedies:"

* * * * *

FRA'S Policy on Jurisdiction Over Passenger Operations

Under the Federal railroad safety laws, FRA has jurisdiction over all railroads except urban rapid transit operations not connected to the general railroad system of transportation. 49 U.S.C. 20102. Within the limits imposed by this authority, FRA exercises jurisdiction over all railroad passenger operations, regardless of the equipment they use, unless FRA has specifically stated below an exception to its exercise of jurisdiction for a particular type of operation. This policy is stated in general terms and does not change the reach of any particular regulation under its applicability section. That is, while FRA may generally assert jurisdiction over a type of operation here, a particular regulation may exclude that kind of operation from its reach. Therefore, this statement should be read in conjunction with the applicability sections of all of FRA's regulations.

Intercity Passenger Operations

FRA exercises jurisdiction over all intercity passenger operations. Because of the nature of the service they provide, they are all considered part of the general railroad system, even if not physically connected to other portions of the system.

Commuter Operations

FRA exercises jurisdiction over all commuter operations. Congress apparently intended that FRA do so when it enacted the Federal Railroad Safety Act of 1970, and made that intention very clear in the 1982 and 1988 amendments to that act. FRA has attempted to follow that mandate consistently. A commuter system's connection to other railroads is not relevant under the rail safety statutes. In fact, FRA considers commuter railroads to be part of the general railroad system regardless of such connections.

In general, FRA considers an operation to be a commuter railroad if its primary purpose is transporting commuters to and from work within a metropolitan area and no substantial portion of its operations is devoted to moving people within a city's boundaries. Examples of commuter railroads include Metra and the Northern Indiana Commuter Transportation District in the Chicago area; Virginia Railway Express and MARC in the Washington area; and Metro-North, the Long Island Railroad, New Jersey Transit, and the Port Authority Trans Hudson (PATH) in the New York area. Incidental service from point to point within a an urban area does not make an operation something other than a commuter railroad if the primary purpose is serving commuters within the broader metropolitan and suburban area.

Other Short Haul Passenger Service

The federal railroad safety statutes give FRA authority over "commuter or other short-haul railroad passenger service in a metropolitan or suburban area." 49 U.S.C. 20902. This means that, in addition to commuter service, there are other short-haul types of service that Congress intended that FRA reach. For example, a passenger system designed primarily to move intercity travelers from a downtown area to an airport, or from an airport to a resort area, would be one that does not have the transportation of commuters within a metropolitan area as its primary purpose. FRA would ordinarily exercise jurisdiction over such a system as "other short-haul service" unless it meets the definition of urban rapid transit and is not connected in a significant way to the general system.

Urban Rapid Transit Operations

One type of short-haul passenger service requires special treatment under the safety statutes: rapid transit operations in an urban area. Only these operations are excluded from FRA's jurisdiction, and only if they are not connected to the general system. FRA considers an operation to be urban rapid transit if one of its major purposes is, and a substantial portion of its operations is devoted to, moving people from point to point within an urban area where there are multiple stops within the city for that purpose. Such an operation could still have the transportation of commuters within the larger metropolitan area as one of its major purposes without being considered a commuter railroad. For example, the Washington Metro system carries large numbers of people to and from the suburbs daily, but one of its primary functions is to provide transportation within the city, where a large proportion of its station stops are located. Other examples of urban rapid transit systems include the CTA in Chicago and the subway systems in New York, Boston, and Philadelphia. The type of equipment used by such a system is not determinative of its status. However, the kinds of vehicles ordinarily associated with street railways, trolleys, subways, and elevated railways are the types of vehicles

most often used for urban rapid transit operations.

FRA can exercise jurisdiction over a rapid transit operation only if it is connected to the general railroad system, but need not exercise jurisdiction over every such operation that is so connected. FRA is aware of several different ways that rapid transit operations can be connected to the general system. Our policy on the exercise of jurisdiction will depend upon the nature of the connection(s). In general, a connection that involves operation of transit equipment as a part of, or over the lines of, the general system will trigger FRA's exercise of jurisdiction. Below, we review some of the more common types of connections and their effect on the agency's exercise of jurisdiction. This is not meant to be an exhaustive list of connections.

Rapid Transit Connections Sufficient To Trigger FRA's Exercise of Jurisdiction

Certain types of connections to the general railroad system will cause FRA to exercise jurisdiction over the rapid transit line to the extent it is connected. FRA will exercise jurisdiction over the portion of a rapid transit operation that is conducted as a part of or over the lines of the general system. For example, rapid transit operations are conducted on the lines of the general system where the rapid transit operation and other railroad use the same track, and where the rapid transit operation and other railroad have a railroad crossing at grade. In the first example, FRA will exercise its jurisdiction over the operations conducted on the general system. In the second example, FRA will exercise its jurisdiction sufficiently to assure safe operations over the at-grade railroad crossing. FRA will also exercise jurisdiction to a limited extent over a rapid transit operation that, while not operated on the same tracks as the conventional railroad, is connected to the general system by virtue of operating in a shared right of way involving joint control of trains. For example, if a rapid transit line and freight railroad were to operate over a movable bridge and were subject to the same authority concerning its use (*e.g.*, the same tower operator controls trains of both operations), FRA will exercise jurisdiction in a manner sufficient to ensure safety at this point of connection. FRA believes these connections present sufficient intermingling of the rapid transit and general system operations to pose significant hazards to one or both operations.

In situations involving joint use of the same track, it does not matter that the rapid transit operation occupies the track only at times when the freight, commuter, or intercity passenger railroad that shares the track is not operating. While such time separation could provide the basis for waiver of certain of FRA's rules, it does not mean that FRA will not exercise jurisdiction. However, FRA will exercise jurisdiction over only the portions of the rapid transit operation that are conducted on the general system. For example, a rapid transit line that operates over the general system for a portion of its length but has significant portions of street railway that are not used by conventional railroads would be subject to FRA's rules only with respect to the general system portion. The remaining portions would not be subject to FRA's rules. If the non-general system portions of the rapid transit line are considered a "rail fixed guideway system" under 49 CFR part 659, those rules, issued by the Federal Transit Administration, would apply to them. Similarly, geographically isolated connections such as rail-rail crossings and common control of bridges will warrant exercise of jurisdiction only with regard to the safety of operations at those locations. However, FRA will apply its equipment, track, signal, and other regulatory requirements at this location as benchmark levels against which safety conditions in waiver applications can be tested.

Rapid Transit Connections Not Sufficient To Trigger FRA's Exercise of Jurisdiction

Although FRA could exercise jurisdiction over a rapid transit operation based on any connection it has to the general railroad system, FRA believes there are certain connections that are too minimal to warrant the exercise of its jurisdiction. For example, a rapid transit system that has a switch for receiving shipments from the general system railroad is not one over which FRA would assert jurisdiction. This assumes that the switch is used only for that purpose. In that case, any entry onto the rapid transit line by the freight railroad would be for a very short distance and solely for the purpose of dropping off or picking up cars. In this situation, the rapid transit line is in the same situation as any shipper or consignee; without this sort of connection, it cannot receive goods by rail.

Mere use of a common right of way in which the conventional railroad and rapid transit operation do not share any means of train control would not trigger FRA's exercise of jurisdiction. In this context, the presence of intrusion detection devices to alert one or both carriers to incursions by the other one would not be considered a means of common train control. These common rights of way are often designed so that the two systems function completely independently of each other. However, where transit operations share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its rules on grade crossing signals that, for example, require prompt reports of warning system malfunctions. *See* 49 CFR part 234. In addition, FRA and FTA will coordinate with rapid transit agencies and railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit trains and conventional equipment.

Where these very minimal connections exist, and except with regard to shared highway-rail grade crossings, FRA will not exercise jurisdiction unless and until an emergency situation arises involving such a connection, which is a very unlikely event. However, if such a system is properly considered a rail fixed guideway system, FTA's rules (49 CFR part 659) will apply to it.

Coordination of the FRA and FTA Programs

FTA's rules on rail fixed guideway systems (49 CFR part 659) apply to any such systems or portions thereof not subject to FRA's rules. On rapid transit systems that are not sufficiently connected to the general railroad system to warrant FRA's exercise of jurisdiction (as explained above), FTA's rules will apply exclusively. On those rapid transit systems that are connected to the general system in such a way as warrant exercise of FRA's jurisdiction, only those portions of the rapid transit system that entail operations over the lines of the general system will be subject to FRA's rules.

A rapid transit railroad may apply to FRA for a waiver of any FRA regulations. See 49 CFR part 211. FRA will seek FTA's views whenever a rapid transit operation petitions FRA for a waiver of its safety rules. In granting or denying any such waiver, FRA will make clear whether its rules do not apply to any segments of the operation so that it is clear where FTA's rules do apply.

* * * * *

Issued in Washington, D.C., on September 30, 1999.

Jolene M. Molitoris,

Federal Railroad Administrator.

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Federal Register

Monday
November 1, 1999

Part IX

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1845–AA03

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: We amend the regulations governing the disclosure of institutional and financial assistance information under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). These programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). These regulations implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998.

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The changes to certain sections, particularly §§ 668.41 (b) and (c) and 668.46(c) (1)–(4) and (f), reflect changes made by Public Law 105–244 that already are in effect. Sections 668.41 (b) and (c) concern the distribution of information through electronic media and the distribution to enrolled students of a list of the information to which they are entitled upon request. Sections 668.46(c) (1)–(4) and (f) concern the reporting of crime statistics and the maintenance of a crime log. You may use these regulations prior to July 1, 2000 as guidance in complying with the relevant statutory provisions. You can find the full text of Public Law 105–244 at http://www.access.gpo.gov/nara/publaw/105publ.html.

FOR FURTHER INFORMATION CONTACT: Paula Husselmann (Paula_Husselmann@ed.gov) or Lloyd Horwich (Lloyd_Horwich@ed.gov), U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, room 3045, Washington, DC 20202–5344. Telephone (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On August 10, 1999, we published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions in the **Federal Register** (64 FR 43582). In the preamble to the NPRM, we discussed the following proposed changes:

- Amending § 668.41 to make the information disclosure process more understandable and less burdensome, to require institutions to provide enrolled students a list of the information to which the students are entitled upon request, and to provide for institutions' use of Internet and Intranet websites for the disclosure of information.
- Amending § 668.42 by incorporating it into § 668.41.
- Amending § 668.43 to require institutions to disclose their requirements and procedures for a student to officially withdraw from the institution.
- Amending § 668.45 regarding the disclosure of completion/graduation and transfer-out rate information by implementing changes made by the 1998 Amendments, providing for a July 1 annual disclosure date, limiting the required disclosure of transfer-out rates to certain institutions, achieving greater consistency between term and nonterm-based institutions in establishing a cohort, and adding optional disclosures.
- Amending § 668.46 regarding the disclosure of campus security information to define terms (including campus, noncampus buildings or property, and public property), by excluding pastoral or professional counselors from the definition of a campus security authority, by adding new categories of crimes to be reported and new policies to be disclosed, by clarifying how to compile and depict crime statistics, by changing the date for disclosure of the annual security report to October 1, by requiring certain institutions to maintain a publicly available crime log, and by requiring institutions annually to submit their crime statistics to the Department.
- Amending § 668.47 by providing for the disclosure of additional data about revenues and expenses attributable to an institution's intercollegiate athletic activities, by clarifying the meaning of various terms, and by requiring institutions annually to submit their Equity in Athletics Disclosure Act (EADA) report to the Department.
- Amending § 668.48 to correspond with § 668.45 concerning the disclosure of completion/graduation and transfer-out rates.

Discussion of Student Financial Assistance Regulations Development Process

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, we obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, we must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless we reopen that process or explain any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 10, 1999, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. We invited comments on the proposed regulations by September 15, 1999, and 132 comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

These regulations reflect the following changes to the proposed regulations in response to public comment:

- In § 668.43(a)(3), we clarified that the requirement that institutions disclose when a student must officially withdraw from the institution includes the disclosure of the procedures for a student to officially withdraw.
- In § 668.46(a) we revised the definition of a professional counselor to no longer require that the counselor be an employee of the institution. In addition, we revised the definition by replacing the term "psychological counseling" with the term "mental health counseling."
- We moved the definition of "prospective employee" from § 668.46(a) to § 668.41(a).

We added § 668.46(c)(2) to require institutions to record a crime statistic in their annual security reports for the calendar year in which the crime was reported to a campus security authority.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and

suggested changes the law does not authorize us to make.

Analysis of Comments and Changes

Subpart D—Institutional and Financial Assistance Information for Students

These regulations (1) retitle Subpart D from "Student Consumer Information Services" to "Institutional and Financial Assistance Information for Students," to conform the title to that of section 485 of the HEA, and (2) renumber the sections.

These regulations remove current § 668.42 and incorporate it into § 668.41. Therefore, these regulations renumber current §§ 668.43–49 as §§ 668.42–48; the preamble to these regulations refers to the new section numbers.

Questions and Recommendations:

Commenters requested guidance on implementation of the requirements of this subpart and made recommendations concerning how we should interpret these regulations or apply them to particular circumstances. As these comments did not request any changes in the proposed regulations, we will provide separate guidance at a later date.

General Comments

The Secretary should clarify the record retention requirements that apply to these regulations.

Discussion: Section 668.24 of the Student Assistance General Provisions outlines the record retention requirements for the student financial assistance programs. Generally, a record must be maintained for three years following the end of the award year for which the record was established. With respect to the disclosure of institutional and financial assistance information provided under Subpart D of the Student Assistance General Provisions, the purpose is for the disclosure of certain information to students and other parties. Therefore, the institution must retain any record related to the disclosure for three years following the date of disclosure.

Using the campus security records as an example, an institution's annual security report to be disclosed on October 1, 2000 must include crime statistics for calendar years 1997, 1998, and 1999. The record retention regulations require the institution to retain records to substantiate the information in its 2000 report for three years from October 1, 2000. Therefore, calendar year 1997 records must be retained until October 1, 2003.

Changes: None.

Section 668.41 Reporting and Disclosure of Information

Comments: Section 668.41 should address any information institutions participating in Title IV, HEA programs are required to disclose by any Department of Education regulation, not just information institutions are required to disclose by these regulations (34 CFR Part 668, Subpart D).

Discussion: Section 668.41 only is intended to address information that institutions are required to disclose by section 485 of the HEA. We believe that including in § 668.41 all information that institutions must disclose under any Department regulation is impractical and would be confusing.

Changes: None.

Comments: The Department should provide a chart listing all information that institutions must disclose under these regulations and the persons to whom they must disclose the information.

Discussion: We believe that § 668.41 adequately provides the information sought by this comment. However, we will provide continuing technical assistance, including the requested chart, to institutions to help them understand and comply with these regulations.

Changes: None.

Comments: The Department should clarify the level of description of required information it expects institutions to provide in the various notices of the availability of information that are required by § 668.41.

Discussion: As stated in the preamble to the NPRM (64 FR 43583), the description should be sufficient to allow students and others to understand the nature of the information and to make informed decisions about whether to request the information. We do not believe there is a need to be more prescriptive in this area.

Changes: None.

Comments: Remove the word "freshman" from the definition "first-time, freshman student" in § 668.41(a), which identifies those students that institutions must include in their cohorts for calculating completion or graduation rates, and if applicable, transfer-out rates.

Discussion: As described in § 668.45, institutions must include in their cohorts first-time, certificate- or degree-seeking, full-time undergraduate students who never have attended any institution of higher education (including in the cohort those who enroll in the fall term having attended a postsecondary institution for the first time in the prior summer term or having earned college credit in high school) regardless of their class standing. As some members of the cohort may have advanced standing, we agree that the use of the word "freshman" in the definition could cause confusion.

Changes: The term "first-time freshman student" is replaced by the term "first-time, undergraduate student" wherever it appears in these regulations (§§ 668.41(a), 668.45(a)(3)(iii), and 668.45(a)(4)(i)–(ii)).

Comments: The definition of "notice" in § 668.41(a) should not require institutions, in providing the various notices of the availability of information required by § 668.41, to provide the notices on a one-to-one basis to persons to whom the information need only be provided upon request.

Discussion: We do not believe that students and others entitled to the information will be adequately notified of its availability if the notification of its availability is made through means that do not ensure that each person who is entitled to the notification receives it. The regulation does not prescribe the method by which institutions must notify students and others of the information's availability; the regulation simply prescribes that the method used must provide individualized notice.

Changes: None.

Comments: Change §§ 668.41(c) and (d) to include completion and graduation rates, and if applicable, transfer-out rates, for athletes under § 668.48, among the required disclosures of information.

Discussion: Section 485(a)(1) of the HEA does not include completion and graduation rates of athletes in the list of information institutions must provide upon request to enrolled and prospective students. Although section 485(e) of the HEA only requires institutions to provide the report concerning athletes' graduation rates to prospective student-athletes and their parents, high school coaches, and guidance counselors, we encourage institutions to provide the report to others who request it.

Changes: None.

Comments: Rather than requiring institutions under § 668.41(c) annually to provide all enrolled students a notice listing the information to which they are entitled upon request, allow institutions to tell students, at the time the institutions distribute the notice, how often they will publish the list and how students can obtain interim changes to the list.

Discussion: Section 485(a) of the HEA specifically requires that institutions provide the list annually to all enrolled students.

Changes: None.

Comments: The Department should clarify that § 99.7, which is referenced in § 668.41(c)(1), refers to the notification requirements under the Family Educational Rights and Privacy Act of 1974 (FERPA).

Discussion: We agree.

Changes: Section 668.41(c)(1) is amended to include a reference to FERPA.

Comments: The requirement for disclosure of information about the terms and conditions of deferral of loan repayments for service under the Peace Corps Act, the Domestic Volunteer Service Act of 1973, or for comparable service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service should be moved from § 668.41(d)(4) to § 668.42 (Financial assistance information), which addresses, among other subjects, loan repayment.

Discussion: We agree with the commenters.

Changes: Section 668.41(d)(4) in the NPRM is moved to § 668.42(c)(7).

Comments: If the purpose of the revised § 668.41 is to put all of an institution's disclosure responsibilities under subpart D in a single section, the requirement that an institution must report its crime statistics to the Department should be moved from § 668.46(g) to § 668.41.

Discussion: We agree with the commenters.

Changes: Section 668.46(g) in the NPRM is moved to § 668.41(e)(5).

Comments: The Department should clarify that the prohibition on using the Internet to provide the information required by § 668.41(f)(1)(i) to prospective student-athletes and their parents does not prohibit a national collegiate athletic association from obtaining a waiver for its members under § 668.41(f)(1)(ii) for providing the information to prospective student-athletes' high school coaches and guidance counselors by distributing the information to all secondary schools in the United States through the Internet or other electronic means.

Discussion: We did not intend the prohibition referred to above to address the means by which a national collegiate athletic association must provide the information to secondary schools in order to obtain a waiver under § 668.41(f)(1)(ii). We would be pleased to work with any such association seeking a waiver for its members to determine whether the association's proposed method of providing the information to secondary schools is sufficient to qualify for a waiver.

Changes: None.

Section 668.43 Institutional and Financial Assistance Information

Comments: The requirement in § 668.43(a)(2) and (4) that an institution disclose any refund policy with which the institution is required to comply should make clear that the requirement refers to any refund policy required by the institution's accrediting agency or State agency, not to the requirements for determining the amount of Title IV HEA program assistance that a student has earned upon withdrawal.

Discussion: Institutions are required to disclose any refund policy that requires the return of unearned funds to their source. This information includes the determination of amounts returned to the title IV programs and all other provisions of § 668.22, as well as any refund policy required by the State or the school's accrediting agency, or any institutional refund policy.

Changes: None.

Comments: In addition to an institution's disclosure of when a student must officially withdraw from the institution, the disclosure should include the institution's procedures for that withdrawal.

Discussion: Any disclosure of the requirements for withdrawal must necessarily include sufficient information for a student to know how to go about withdrawing from the institution.

Changes: We revised § 668.43(a)(3) to clarify that the requirement that an institution disclose its requirements for withdrawal includes a requirement that an institution disclose the procedures a student must follow to officially withdraw.

Section 668.45 Information on Completion or Graduation Rates

Comments: Term-based institutions whose students enroll before September 1 of a given year should continue to include these students in their fall cohort for that year.

Discussion: These regulations do not change how a term-based institution establishes its fall cohort. A term-based institution may include in its fall cohort students who enroll for the fall term before September 1 of a given year, and continue to include students who attended the institution for the first time during the summer preceding the fall term.

Changes: We revised § 668.45(a)(3)(i) to clarify that an institution's fall cohort must include all students who enter a term-based institution during the fall term, regardless of whether they enter before or after September 1.

Comments: Institutions should be allowed to disclose graduation or completion and, if applicable, transfer-out rates for their 1996 and 1997 cohorts based on a September 1 though August 31 year.

Discussion: We agree. The 1998 Amendments changed the year during which institutions must determine whether students for whom 150% of normal time for completion of their programs has elapsed have completed or graduated from the program from July 1 through June 30 to September 1 through August 31. These regulations reflect the statutory change.

Changes: None.

Comments: In determining its fall cohort, a term-based institution should be able to consider who is enrolled on another official fall reporting date other than October 15 or the end of the drop-add period to make the reporting date consistent with the Department's Integrated Postsecondary Education Data System's (IPEDS) Fall Enrollment (EF) report.

Discussion: We agree that a term-based institution's establishment of its fall cohort under this regulation should be consistent with the IPEDS data on fall enrollment.

Changes: We revised § 668.45(a)(4) to include as an entering student a first-time, full-time, certificate or degree-seeking undergraduate who is enrolled on another official fall reporting date. Also, we added to § 668.41(a) the definition of "official fall reporting date" used by the IPEDS EF report.

Comments: Transfer-out rates should be optional for all institutions for a number of reasons, including the greater regulatory burden placed on institutions that consider "substantial preparation" as part of their mission—for example, community colleges.

Discussion: The HEA requires institutions to report the rate at which students who receive substantial preparation transfer out of the institution. Therefore, the transfer-out rate cannot be made optional in all cases. These regulations limit the requirement to institutions that determine that their missions include providing substantial preparation for their students to enroll in other eligible institutions. Institutions with substantial numbers of transfers-out may have a lower graduation and completion rate than other institutions and thus may find it desirable to report a transfer-out rate. We anticipate that the required transfer-out rate will not apply to most four-year institutions. Consistent with the treatment of

transfer-out students by IPEDS Graduation Rate Survey (GRS), an institution only is required to report on students whom the institution knows transferred to another institution.

Changes: None.

Comments: The Secretary should clarify that a student who leaves an undergraduate institution for study at a graduate institution is not a transfer-out under these regulations.

Discussion: For purposes of these regulations, a student who leaves an undergraduate program for study in a graduate program is not considered a transfer-out. Normally, such a student would have completed his or her program and be included in the institution's completion/graduation rate.

Changes: None.

Comments: A term-based institution should be defined as an institution at which more than fifty percent of the programs are term-based.

Discussion: Section 668.45(a)(3)(i) defines a term-based institution as an institution at which a predominant number of the programs are based on semesters, trimesters, or quarters.

Changes: None.

Comments: The Secretary should indicate that an institution's compliance with the IPEDS GRS ensures compliance with the methodological requirements of § 668.45.

Discussion: We agree. An institution's compliance with the GRS constitutes compliance with the methodological provisions of §§ 668.45 and 668.48.

Changes: None.

Section 668.46 Institutional Security Policies and Crime Statistics

Comments: Numerous commenters requested that we specifically exclude certain types of employees from the definition of a campus security authority—for example, lay counselors, dormitory rectors, physicians, access monitors, rape crisis counselors, doctoral counselor trainees, campus ombudsmen, and teaching faculty. Other commenters requested clarification about whether student security personnel organized by student governments and concert security employees who work for the institution are campus security authorities. Still other commenters asked us to define who is an "official" of the institution, and what "significant responsibility" for student and campus activities means.

Discussion: To determine if an institution must collect crime statistics from a particular employee or official, or provide a timely warning report based on crimes reported or known to the employee or official, an institution must first determine if that official is a campus security authority. In addition to campus law enforcement staff, a campus security authority is someone with "significant responsibility for student and campus activities." Absent this responsibility, an employee is not a campus security authority.

For example, a dean of students who oversees student housing, a student center, or student extra-curricular activities, has significant responsibility for student and campus activities. Similarly, a director of athletics, team coach, and faculty advisor to a student group also have significant responsibility for student and campus activities.

A single teaching faculty member is unlikely to have significant responsibility for student and campus activities, except when serving as an advisor to a student group. A physician in a campus health center or a counselor in a counseling center whose only responsibility is to provide care to students are unlikely to have significant responsibility for student and campus activities. Also, clerical staff are unlikely to have significant responsibility for student and campus activities.

Since official responsibilities and job titles vary significantly from campus to campus, we believe that including a list of specific titles in the regulation is not practical. However, as stated above, we will provide additional guidance at a later date concerning interpretation of these regulations.

Changes: None.

Comments: The definition of campus security authority should include only individuals working for the institution's campus security office or expressly performing a campus security function at the institution's request.

Discussion: We believe that the new definition and guidance reflect the reality that on colleges campuses, officials who are not police officials or acting as event security at student or campus events nevertheless are responsible for students' or campus security. We also believe the new definition and guidance will better enable institutions to determine who is a campus security authority and thereby to comply with these regulations.

Changes: None.

Comments: Commenters asked a number of questions regarding our interpretation of the definitions of campus, noncampus building or property, and public property, such as what it means for an institution to "control" property, what "adjacent to and accessible from the campus" means, and whether remote classrooms or remote research stations are included in the definition of campus. Commenters also asked how different institutions that occupy the same general geographic area and different campuses of an institution should report crimes.

Discussion: We will respond to commenters' questions concerning implementation of the proposed regulations, and will post our answers on our Information for Financial Assistance Professionals (IFAP) website: http://ifap.ed.gov

Changes: None.

Comments: Generally, the commenters expressed much satisfaction with the compromises made during negotiated rulemaking regarding the definitions in § 668.46(a). In particular, many commenters agreed with the negotiators' decision to exclude professional and pastoral counselors from being required to report crimes discussed with them in their role as counselor. Some commenters disagreed with this exclusion, on the belief that reporting a statistic cannot identify the victim. Other commenters believed that the process of reporting statistics and avoiding double-counting can lead to identification of the victim. Many commenters stressed the importance of ensuring that students' ability to obtain confidential counseling not be compromised.

Discussion: We agree with the commenters about the importance of victims' being able to obtain confidential counseling. We also agree that although reporting a statistic is not likely, of itself, to identify the victim, the need to verify the occurrence of the crime and the need for additional information about the crime to avoid double-counting can lead to identification of the victim.

Representatives of psychological counselors informed us that counselors would, as a matter of professional obligation, be required to inform a patient at the beginning of any session that detailed information may be disclosed to other parties for statistical reporting purposes. In their experience, this disclosure has a chilling effect on access to professional counseling by causing a victim to decline or be wary of professional assistance. Given the importance of access to counseling, the availability of statistics from other sources on campus, and the provisions we included in this regulation concerning confidential reporting, we believe this regulation strikes the appropriate balance between individuals' need for counseling and the community's need for complete statistics.

Changes: None.

Comments: The definition of professional counselor should refer to mental health counseling instead of psychological counseling because the job description of a professional counselor other than a psychologist or psychiatrist might refer to mental health counseling or crisis counseling, but would be unlikely to refer to psychological counseling. This definition also should refer to independent contractors who perform professional counseling for institutions.

Discussion: We agree with the commenters that changing the definition to refer to mental health counseling rather than psychological counseling provides a clearer, more precise definition, but emphasize that the change does not expand the definition to include non-professional or informal counselors.

We believe that changing the definition by eliminating the reference to employee would clarify that the definition refers to the nature of the counselor, not the counselor's employment relationship with the institution.

Changes: We changed the definition of professional counselor in § 668.46(a) to refer to mental health counseling and to exclude the requirement that a professional counselor be an employee of the institution.

Comments: The requirement that institutions provide notice of the availability of the annual security report to each prospective employee is overly burdensome as that term is defined (an individual who has contacted an eligible institution requesting information concerning employment with the institution). The definition should be limited to individuals who apply for employment. Also, the definition should be moved from § 668.46 to § 668.41, because it applies to both sections, and the definitions in § 668.41 apply to the entire subpart, while those in § 668.46 only apply to that section.

Discussion: We do not believe that the definition is unduly burdensome, especially given the importance of prospective employees being able to make fully informed choices. The requirement applies only when an individual requests information from an institution and the institution, presumably, either will mail the individual the information or tell the individual where to obtain the information. The institution simply can include in whatever information it provides the individual a brief notice of the availability of the annual security report.

We agree that the definition should be moved to § 668.41.

Changes: The definition of prospective employee is moved from § 668.46(a) to § 668.41(a).

Comments: Some commenters objected to the requirement in § 668.46(b)(2)(ii) that institutions disclose their policies for preparing the annual disclosure of crime statistics and requested clarification of what this disclosure entails.

Discussion: This disclosure serves two important purposes. It informs the students about how and from what sources the report is prepared. Many students may not be aware that a formal police report or investigation is not needed in order for a crime report to be included in the statistics. This disclosure also requires an institution to consider what officials or offices must be canvassed in order to prepare a complete report. Incorrectly, some institutions believe that only formal police reports need be included; the disclosure allows the reader to conclude that all of the proper offices have been canvassed. The disclosure need only provide a general description of the process for preparing the report, including the offices surveyed. There is no requirement to disclose every detailed step in the report's preparation.

Changes: None.

Comments: The endorsement of anonymous crime reporting procedures is a valuable addition to the regulations. Although incomplete anonymous reports raise a number of statistical reporting questions, it is a valuable alternative for some crime victims. In some States confidential reporting of crime is illegal.

Discussion: Institutions should note that the regulations refer to confidential reporting, not anonymous reporting. The regulations do not require institutions to allow confidential reporting. Rather, § 668.46(b)(2)(iii) and (4)(iii) require institutions to state whether they allow confidential reporting, and if so, to describe their procedures for that reporting, including whether the institution encourages pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of those procedures. An institution prohibited by State law from allowing confidential reporting simply would be required to state that in its annual security report.

Changes: None.

Comments: Campus judicial processes do not determine whether a crime occurred, but rather determine only whether the accused person committed an act that violates the institution's rules, policies, or code of conduct. Therefore, the Secretary should clarify that referrals for alcohol, drug, and weapons law violations are limited to a breach of institutional policy, not law.

Discussion: The requirement that institutions report statistics for referrals for campus disciplinary action for alcohol, drug and weapons possession refers to violations of law only. For example, if a student of legal drinking age in the State in which an institution is located violates the institution's "dry-campus" policy and is referred for campus disciplinary action, that statistic should not be included in the institution's crime statistics. We believe that campus judicial officials and campus police are capable of determining whether a particular alcohol, drug, or weapons violation is a violation of law.

Changes: None.

Comment: Most commenters responded to our question regarding whether a crime should be recorded for the calendar year in which the crime was reported to the institution or the calendar year in which the crime occurred. The commenters were largely in favor of recording the crime on the date the crime was reported to the institution. The commenters indicated that for statistical purposes the FBI collects crime data based on when crimes are reported to the police, not on the date crimes occur. One reason for this standard is that crimes generally are discovered after they occur, making the date of occurrence unknown or uncertain. The commenters explained that using the date of occurrence creates additional burden for institutions.

Discussion: We appreciate the responses to our solicitation for comment on this issue. We previously have required institutions to report crime statistics according to the year in which the crimes occurred. However, we are convinced by the weight of the comments that we would eliminate a considerable burden on institutions by making this reporting requirement consistent with FBI reporting practices, and that no crime statistics will go unreported as a result of this change.

Changes: Section 668.46(c)(2) is revised to require an institution to record crime data based on when the crime was reported to a campus security authority.

Comments: The problem with reporting which crimes are hate crimes is an institution's reliance on municipal police departments to provide this information. Hate crimes are often a political issue in municipalities, which may be reluctant to release information concerning hate crimes to an institution.

Discussion: We recognize that some institutions must rely on data, including hate crime data, from outside agencies. In complying with the statistical reporting requirements, an institution must make a reasonable, good-faith effort to obtain statistics from outside agencies. An institution that makes such an effort is not responsible for the agencies' failure to provide the statistics or for verifying the accuracy of statistics the agencies provide.

Changes: None.

Comments: The requirement that institutions report hate crimes related to "any crime involving bodily injury" is inconsistent with other statistical reporting requirements. To require an institution to search for every crime that may have involved personal injury is overly burdensome.

Discussion: The requirement that institutions report hate crimes related to any crime involving bodily injury is mandated by the HEA.

Changes: None.

Comments: The Secretary should clarify that institutions are not required to report statistics for public property that surrounds noncampus buildings or property.

Discussion: These regulations do not require an institution to report crime statistics for public property surrounding noncampus buildings or property.

Changes: None.

Comments: The commenters asked that the preamble make clear that an institution must use both the UCR definitions and standards when reporting crime.

Discussion: We reiterate the language of § 668.46(c)(7) that requires an institution to use UCR guidance when defining and classifying crimes.

Changes: None.

Comments: The commenters strongly supported the use of a map to aid in the disclosure of crime statistics, and believe that a map would be very effective in indicating the areas to be considered in compiling these statistics. Some commenters believe that the Department will receive complaints or queries from the campus community that a map disclosed by an institution does not accurately depict the reporting area of a campus and recommended that the Department establish a uniform review process for the review of maps so that questions can be handled in a timely and efficient manner.

Discussion: We agree with the commenters that using a map in disclosing crime statistics can be very helpful; students and others will be able to visualize the areas covered by an institution's annual security report. We will not establish a uniform process to review institutions' maps. Anyone who believes that an institution is not in compliance with the campus security regulations may contact the Office of Student Financial Assistance regional office for the State in which the institution is located. The addresses and telephone numbers for the regional Case Team Managers are at the following Internet address: http://ed.gov/about.html.

Changes: None.

Comments: The regulations should define what is meant, for purposes of crime log entries, by the nature, date, time and general location of each crime. The Department should emphasize that institutions may withhold this information only when it is absolutely necessary to prevent a breach of victim's confidentiality.

Discussion: We believe these terms are straightforward and there is no need for more prescriptive regulation. However, we emphasize that an institution may only withhold this information when it is sufficiently clear that the victim's confidentiality is in jeopardy.

Changes: None.

Section 668.47 Report on Athletic Program Participation Rates and Financial Support Data

Comments: Section 668.47 should include a separate audit requirement for the data it requires institutions to report.

Discussion: As discussed in the preamble to the NPRM (64 FR 43588–89), the primary change to the EADA made by the 1998 Amendments was the relocation of informational requirements concerning revenues and expenses attributable to institutions' intercollegiate athletic activities from section 487(a) of the HEA (Program Participation Agreements) to section 485(g). In relocating those requirements, Congress repealed the audit requirement under section 487(a). We believe Congress' intent is clear that there should not be a separate audit requirement for the data required by § 668.47.

Changes: None.

Comments: Institutions annually submit an audited financial statement to the Department. The requirement in § 668.47 to report intercollegiate athletics financial data separately requires reformatting the data, causes the data to appear differently than in the financial statement, and is administratively burdensome. The Department should consider whether the benefit to students, parents, and others from this report outweighs the cost to institutions.

Discussion: The requirements in § 668.47 concerning the disclosure of intercollegiate athletics financial data are statutory requirements.

Changes: None.

Comments: When and to which office of the Department should institutions submit their EADA reports?

Discussion: We are developing a process for receiving the reports. When the process is complete, we will inform institutions on the Department's IFAP website: http://ifap.ed.gov. Institutions should have made the reports available to students and others by October 15, 1999.

Changes: None

Section 668.48 Report on Completion or Graduation Rates for Student-Athletes

Comments: Allow term-based institutions, in determining their athletic cohorts under § 668.48(a), to include athletes who receive athletically related student aid at any time during the academic year in which their cohorts are established, rather than only allowing those institutions to include athletes who receive aid by the end of the institution's drop-add period or by October 15.

Discussion: We stated in the preamble to the NPRM (64 FR 43589) that institutions should include in their athletic cohorts students who receive athletically related student aid by the end of the institution's drop-add period or by October 15 because we believed that would lessen institutions' burden. However, based on the weight of the comments, and because the Department's Integrated Postsecondary Education Data System's (IPEDS) Graduation Rate Survey allows term-based institutions to use the entire academic year to determine their athletic cohorts, we now change the guidance we gave in the preamble to the NPRM and allow term-based institutions to use the entire academic year to determine their athletic cohorts.

Further, we clarify that "drop-add period," in this context, refers to institutions' fall drop-add periods.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these final regulations are those resulting from statutory requirements and those we have determined to be

necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (64 FR 43589–43590).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; and 84.268 William D. Ford Federal Direct Loan Programs)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements.

Dated: October 19, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1094, 1099c and 1141, unless otherwise noted.

2. The title of subpart D is revised to read as follows:

Subpart D—Institutional and Financial Assistance Information for Students

3. Section 668.41 is revised to read as follows:

§ 668.41 Reporting and disclosure of information.

(a) *Definitions.* The following definitions apply to this subpart:

Athletically related student aid means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution. Other student aid, of which a student-athlete simply happens to be the recipient, is not athletically related student aid.

Certificate or degree-seeking student means a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

First-time undergraduate student means an entering undergraduate who has never attended any institution of higher education. It includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced standing (college credit earned before graduation from high school).

Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

Notice means a notification of the availability of information an institution is required by this subpart to disclose, provided to an individual on a one-to-one basis through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail, or electronic mail. Posting on an Internet website or an Intranet website does not constitute a notice.

Official fall reporting date means that date (in the fall) on which an institution must report fall enrollment data to either the State, its board of trustees or governing board, or some other external governing body.

Prospective employee means an individual who has contacted an eligible institution for the purpose of requesting information concerning employment with that institution.

Prospective student means an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Undergraduate students, for purposes of §§ 668.45 and 668.48 only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate.

(b) *Disclosure through Internet or Intranet websites.* Subject to paragraphs (c)(2), (e)(2) through (4), or (g)(1)(ii) of this section, as appropriate, an institution may satisfy any requirement to disclose information under paragraph (d), (e), or (g) of this section for—

(1) Enrolled students or current employees by posting the information on an Internet website or an Intranet website that is reasonably accessible to the individuals to whom the information must be disclosed; and

(2) Prospective students or prospective employees by posting the information on an Internet website.

(c) *Notice to enrolled students.* (1) An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant to paragraphs (d), (e), and (g) of this section, and pursuant to 34 CFR 99.7 (§ 99.7 sets forth the notification requirements of

the Family Educational Rights and Privacy Act of 1974). The notice must list and briefly describe the information and tell the student how to obtain the information.

(2) An institution that discloses information to enrolled students as required under paragraph (d), (e), or (g) of this section by posting the information on an Internet website or an Intranet website must include in the notice described in paragraph (c)(1) of this section—

(i) The exact electronic address at which the information is posted; and

(ii) A statement that the institution will provide a paper copy of the information on request.

(d) *General disclosures for enrolled or prospective students.* An institution must make available to any enrolled student or prospective student, on request, through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to § 668.42);

(2) The institution (pursuant to § 668.43); and

(3) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(e) *Annual security report.* (1) *Enrolled students and current employees—annual security report.* By October 1 of each year, an institution must distribute, to all enrolled students and current employees, its annual security report described in § 668.46(b), through appropriate publications and mailings, including—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;

(ii) A publication or publications provided directly to each individual; or

(iii) Posting on an Internet website or an Intranet website, subject to paragraphs (e)(2) and (3) of this section.

(2) *Enrolled students—annual security report.* If an institution chooses to distribute its annual security report to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must comply with the requirements of paragraph (c)(2) of this section.

(3) *Current employees—annual security report.* If an institution chooses to distribute its annual security report to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.

(4) *Prospective students and prospective employees—annual security report.* The institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report, upon request, to a prospective student or prospective employee. If the institution chooses to provide its annual security report to prospective students and prospective employees by posting the disclosure on an Internet website, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

(5) *Submission to the Secretary—annual security report.* Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by § 668.46(c) to the Secretary.

(f) *Prospective student-athletes and their parents, high school coach and guidance counselor—report on completion or graduation rates for student-athletes.*

(1)(i) Except under the circumstances described in paragraph (f)(1)(ii) of this section, when an institution offers a prospective student-athlete athletically related student aid, it must provide to the prospective student-athlete, and his or her parents, high school coach, and guidance counselor, the report produced pursuant to § 668.48(a).

(ii) An institution's responsibility under paragraph (f)(1)(i) of this section with reference to a prospective student athlete's high school coach and guidance counselor is satisfied if—

(A) The institution is a member of a national collegiate athletic association;

(B) The association compiles data on behalf of its member institutions, which data the Secretary determines are substantially comparable to those required by § 668.48(a); and

(C) The association distributes the compilation to all secondary schools in the United States.

(2) By July 1 of each year, an institution must submit to the Secretary the report produced pursuant to § 668.48.

(g) *Enrolled students, prospective students, and the public—report on athletic program participation rates and financial support data.*

(1)(i) An institution of higher education subject to § 668.47 must, not later than October 15 of each year, make available on request to enrolled students, prospective students, and the public, the report produced pursuant to § 668.47(c). The institution must make the report easily accessible to students, prospective students, and the public and must provide the report promptly to anyone who requests it.

(ii) The institution must provide notice to all enrolled students, pursuant to paragraph (c)(1) of this section, and prospective students of their right to request the report described in paragraph (g)(1) of this section. If the institution chooses to make the report available by posting the disclosure on an Internet website or an Intranet website, it must provide in the notice the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report on request. For prospective students, the institution may not use an Intranet website for this purpose.

(2) An institution must submit the report described in paragraph (g)(1)(i) of this section to the Secretary within 15 days of making it available to students, prospective students, and the public.

(Approved by the Office of Management and Budget under control number 1845–0004 and 1845–0010)

(Authority: 20 U.S.C. 1092)

4. Section 668.42 is removed, and §§ 668.43 through 668.49 are redesignated as §§ 668.42 through 668.48, respectively.

5. Newly redesignated § 668.42 is amended by removing the word "and" at the end of paragraph (c)(5); by removing the period at the end of paragraph (c)(6), and adding, in its place, "; and"; by adding a new paragraph (c)(7) and revising the OMB control number to read as follows:

§ 668.42 Financial assistance information.

* * * * *

(c) ***

(7) The terms and conditions under which students receiving Federal Family Education Loan or William D. Ford Federal Direct Loan assistance may obtain deferral of the repayment of the principal and interest of the loan for—

(i) Service under the Peace Corps Act (22 U.S.C. 2501);

(ii) Service under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951); or

(iii) Comparable service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service.

(Approved by the Office of Management and Budget under control number 1845–0022)

* * * * *

6. Newly redesignated § 668.43 is revised to read as follows:

§ 668.43 Institutional information.

(a) Institutional information that the institution must make readily available upon request to enrolled and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of costs for necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Estimates of transportation costs for students; and

(v) Any additional cost of a program in which a student is enrolled or expresses a specific interest;

(2) Any refund policy with which the institution is required to comply for the return of unearned tuition and fees or other refundable portions of costs paid to the institution;

(3) The requirements and procedures for officially withdrawing from the institution;

(4) A summary of the requirements under § 668.22 for the return of title IV grant or loan assistance;

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(6) The names of associations, agencies or governmental bodies that accredit, approve, or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(7) A description of any special facilities and services available to disabled students;

(8) The titles of persons designated under § 668.44 and information regarding how and where those persons may be contacted; and

(9) A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the title IV, HEA programs.

(b) The institution must make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1092)

7. Newly redesignated § 668.45 is revised to read as follows:

§ 668.45 Information on completion or graduation rates.

(a)(1) An institution annually must prepare the completion or graduation rate of its certificate- or degree-seeking, full-time undergraduate students, as provided in paragraph (b) of this section.

(2) An institution that determines that its mission includes providing substantial preparation for students to enroll in another eligible institution must prepare the transfer-out rate of its certificate- or degree-seeking, full-time undergraduate students, as provided in paragraph (c) of this section.

(3)(i) An institution that offers a predominant number of its programs based on semesters, trimesters, or quarters must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the cohort of first-time, certificate- or degree-seeking, full-time undergraduate students who enter the institution during the fall term of each year.

(ii) An institution not covered by the provisions of paragraph (a)(3)(i) of this section must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution between September 1 of one year and August 31 of the following year.

(iii) For purposes of the completion or graduation rate and, if applicable, transfer-out rate calculations required in paragraph (a) of this section, an institution must count as entering students only first-time undergraduate students, as defined in § 668.41(a).

(4)(i) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time undergraduate student who is enrolled as of October 15, the end of the institution's drop-add period, or another official reporting date as defined in § 668.41(a).

(ii) An institution covered by paragraph (a)(3)(ii) of this section must count as an entering student a first-time undergraduate student who is enrolled for at least—

(A) 15 days, in a program of up to, and including, one year in length; or

(B) 30 days, in a program of greater than one year in length.

(5) An institution must make available its completion or graduation rate and, if applicable, transfer-out rate, no later than the July 1 immediately following the 12-month period ending August 31 during which 150% of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and, if applicable, transfer-out rate calculations.

(b) In calculating the completion or graduation rate under paragraph (a)(1) of this section, an institution must count as completed or graduated—

(1) Students who have completed or graduated by the end of the 12-month period ending August 31 during which 150% of the normal time for completion or graduation from their program has lapsed; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, by the end of the 12-month period ending August 31 during which 150% of normal time for completion from that program has lapsed.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who by the end of the 12-month period ending August 31 during which 150% of the normal time for completion or graduation from the program in which they were enrolled has lapsed, have not completed or graduated but have subsequently enrolled in any program of an eligible institution for which its program provided substantial preparation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may exclude students who—

(1) Have left school to serve in the Armed Forces;

(2) Have left school to serve on official church missions;

(3) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;

(4) Are totally and permanently disabled; or

(5) Are deceased.

(e)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that

has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of § 668.41(d)(3) and (f).

(3) An institution, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (e)(1) of this section must submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(f) In addition to calculating the completion or graduation rate required by paragraph (a)(1) of this section, an institution may, but is not required to—

(1) Calculate a completion or graduation rate for students who transfer into the institution;

(2) Calculate a completion or graduation rate and transfer-out rate for students described in paragraphs (d)(1) through (4) of this section; and

(3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

(Approved by the Office of Management and Budget under control number 1845–0004)
(Authority: 20 U.S.C. 1092)

8. Newly redesignated § 668.46 is revised to read as follows:

§ 668.46 Institutional security policies and crime statistics.

(a) *Additional definitions that apply to this section.*

Business day: Monday through Friday, excluding any day when the institution is closed.

Campus: (1) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(2) Any building or property that is within or reasonably contiguous to the area identified in paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

Campus security authority: (1) A campus police department or a campus security department of an institution.

(2) Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (1) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.

(3) Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.

(4) An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a pastoral or professional counselor as defined below, the official is not considered a campus security authority when acting as a pastoral or professional counselor.

Noncampus building or property: (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or

(2) Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

Pastoral counselor: A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

Professional counselor: A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification.

Public property: All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

Referred for campus disciplinary action: The referral of any student to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

(b) *Annual security report.* An institution must prepare an annual security report that contains, at a minimum, the following information:

(1) The crime statistics described in paragraph (c) of this section.

(2) A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including—

(i) Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section;

(ii) Policies for preparing the annual disclosure of crime statistics; and

(iii) A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (c)(1) of this section for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures.

(3) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(4) A statement of current policies concerning campus law enforcement that—

(i) Addresses the enforcement authority of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals;

(ii) Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies; and

(iii) Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

(5) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(6) A description of programs designed to inform students and employees about the prevention of crimes.

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.

(8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws.

(10) A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 120(a) through (d) of the HEA.

(11) A statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include—

(i) A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(ii) Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;

(iii) Information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;

(iv) Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;

(v) Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;

(vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—

(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and

(B) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g). For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and

(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

(c) *Crime statistics.* (1) *Crimes that must be reported.* An institution must report statistics for the three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property of the following that are reported to local police agencies or to a campus security authority:

(i) Criminal homicide:

(A) Murder and nonnegligent manslaughter.

(B) Negligent manslaughter.

(ii) Sex offenses:

(A) Forcible sex offenses.

(B) Nonforcible sex offenses.

(iii) Robbery.

(iv) Aggravated assault.

(v) Burglary.

(vi) Motor vehicle theft.

(vii) Arson.

(viii) (A) Arrests for liquor law violations, drug law violations, and illegal weapons possession.

(B) Persons not included in paragraph (c)(1)(viii)(A) of this section, who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

(2) *Recording crimes.* An institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to a campus security authority.

(3) *Reported crimes if a hate crime.* An institution must report, by category of prejudice, any crime it reports pursuant to paragraphs (c)(1)(i) through (vii) of this section, and any other crime involving bodily injury reported to local police agencies or to a campus security authority, that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

(4) *Crimes by location.* The institution must provide a geographic breakdown of the statistics reported under paragraphs (c)(1) and (3) of this section according to the following categories:

(i) On campus.

(ii) Of the crimes in paragraph (c)(4)(i) of this section, the number of crimes that took place in dormitories or other residential facilities for students on campus.

(iii) In or on a noncampus building or property.

(iv) On public property.

(5) *Identification of the victim or the accused.* The statistics required under paragraphs (c)(1) and (3) of this section may not include the identification of the victim or the person accused of committing the crime.

(6) *Pastoral and professional counselor.* An institution is not required to report statistics under paragraphs (c)(1) and (3) of this section for crimes reported to a pastoral or professional counselor.

(7) *UCR definitions.* An institution must compile the crime statistics required under paragraphs (c)(1) and (3) of this section using the definitions of crimes provided in Appendix E to this part and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. For further guidance concerning the application of definitions and classification of crimes, an institution must use either the UCR Reporting Handbook or the UCR Reporting Handbook: NIBRS EDITION, except that in determining how to report crimes committed in a multiple-offense situation an institution must use the UCR Reporting Handbook. Copies of the UCR publications referenced in this paragraph are available from: FBI, Communications Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306 (telephone: 304–625–2823).

(8) *Use of a map.* In complying with the statistical reporting requirements under paragraphs (c)(1) and (3) of this section, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas if the map accurately depicts its campus, noncampus buildings or property, and public property areas.

(9) *Statistics from police agencies.* In complying with the statistical reporting requirements under paragraphs (c)(1) through (4) of this section, an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or State police

agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

(d) *Separate campus.* An institution must comply with the requirements of this section for each separate campus.

(e) *Timely warning.* (1) An institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are—

(i) Described in paragraph (c)(1) and (3) of this section;

(ii) Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (b)(2) of this section or local police agencies; and

(iii) Considered by the institution to represent a threat to students and employees.

(2) An institution is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

(f) *Crime log.* (1) An institution that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include—

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(2) The institution must make an entry or an addition to an entry to the log within two business days, as defined under paragraph (a) of this section, of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

(3)(i) An institution may withhold information required under paragraphs (f)(1) and (2) of this section if there is clear and convincing evidence that the release of the information would—

(A) Jeopardize an ongoing criminal investigation or the safety of an individual;

(B) Cause a suspect to flee or evade detection; or

(C) Result in the destruction of evidence.

(ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse effect described in that paragraph is no longer likely to occur.

(4) An institution may withhold under paragraphs (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.

(5) The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1092)

9. Newly redesignated § 668.47 is revised to read as follows:

§ 668.47 Report on athletic program participation rates and financial support data.

(a) *Applicability.* This section applies to a co-educational institution of higher education that—

(1) Participates in any title IV, HEA program; and

(2) Has an intercollegiate athletic program.

(b) *Definitions.* The following definitions apply for purposes of this section only.

(1) *Expenses.*—(i) *Expenses* means expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities.

(ii) *Operating expenses* means all expenses an institution incurs attributable to home, away, and neutral-site intercollegiate athletic contests (commonly known as "game-day expenses"), for—

(A) Lodging, meals, transportation, uniforms, and equipment for coaches, team members, support staff (including, but not limited to team managers and trainers), and others; and

(B) Officials.

(iii) *Recruiting expenses* means all expenses an institution incurs attributable to recruiting activities. This includes, but is not limited to, expenses for lodging, meals, telephone use, and transportation (including vehicles used for recruiting purposes) for both recruits and personnel engaged in recruiting, any other expenses for official and unofficial visits, and all other expenses related to recruiting.

(2) *Institutional salary* means all wages and bonuses an institution pays a coach as compensation attributable to coaching.

(3)(i) *Participants* means students who, as of the day of a varsity team's first scheduled contest—

(A) Are listed by the institution on the varsity team's roster;

(B) Receive athletically related student aid; or

(C) Practice with the varsity team and receive coaching from one or more varsity coaches.

(ii) Any student who satisfies one or more of the criteria in paragraphs (b)(3)(i)(A) through (C) of this section is a participant, including a student on a team the institution designates or defines as junior varsity, freshman, or novice, or a student withheld from competition to preserve eligibility (*i.e.*, a redshirt), or for academic, medical, or other reasons.

(4) *Reporting year* means a consecutive twelve-month period of time designated by the institution for the purposes of this section.

(5) *Revenues* means revenues attributable to intercollegiate athletic activities. This includes revenues from appearance guarantees and options, an athletic conference, tournament or bowl games, concessions, contributions from alumni and others, institutional support, program advertising and sales, radio and television, royalties, signage and other sponsorships, sports camps, State or other government support, student activity fees, ticket and luxury box sales, and any other revenues attributable to intercollegiate athletic activities.

(6) *Undergraduate students* means students who are consistently designated as such by the institution.

(7) *Varsity team* means a team that—

(i) Is designated or defined by its institution or an athletic association as a varsity team; or

(ii) Primarily competes against other teams that are designated or defined by their institutions or athletic associations as varsity teams.

(c) *Report.* An institution described in paragraph (a) of this section must annually, for the preceding reporting year, prepare a report that contains the following information:

(1) The number of male and the number of female full-time undergraduate students that attended the institution.

(2) A listing of the varsity teams that competed in intercollegiate athletic competition and for each team the following data:

(i) The total number of participants as of the day of its first scheduled contest

of the reporting year, the number of participants who also participated on another varsity team, and the number of other varsity teams on which they participated.

(ii) Total operating expenses attributable to the team, except that an institution may report combined operating expenses for closely related teams, such as track and field or swimming and diving. Those combinations must be reported separately for men's and women's teams.

(iii) In addition to the data required by paragraph (c)(2)(ii) of this section, an institution may report operating expenses attributable to the team on a per-participant basis.

(iv)(A) Whether the head coach was male or female, was assigned to the team on a full-time or part-time basis, and, if assigned on a part-time basis, whether the head coach was a full-time or part-time employee of the institution.

(B) The institution must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.

(v)(A) The number of assistant coaches who were male and the number of assistant coaches who were female, and, within each category, the number who were assigned to the team on a full-time or part-time basis, and, of those assigned on a part-time basis, the number who were full-time and part-time employees of the institution.

(B) The institution must consider graduate assistants and volunteers who served as assistant coaches to be assistant coaches for purposes of this report.

(3) The unduplicated head count of the individuals who were listed under paragraph (c)(2)(i) of this section as a participant on at least one varsity team, by gender.

(4)(i) Revenues derived by the institution according to the following categories (Revenues not attributable to a particular sport or sports must be included only in the total revenues attributable to intercollegiate athletic activities, and, if appropriate, revenues attributable to men's sports combined or women's sports combined. Those revenues include, but are not limited to, alumni contributions to the athletic department not targeted to a particular sport or sports, investment interest income, and student activity fees.):

(A) Total revenues attributable to its intercollegiate athletic activities.

(B) Revenues attributable to all men's sports combined.

(C) Revenues attributable to all women's sports combined.

(D) Revenues attributable to football.

(E) Revenues attributable to men's basketball.

(F) Revenues attributable to women's basketball.

(G) Revenues attributable to all men's sports except football and basketball, combined.

(H) Revenues attributable to all women's sports except basketball, combined.

(ii) In addition to the data required by paragraph (c)(4)(i) of this section, an institution may report revenues attributable to the remainder of the teams, by team.

(5) Expenses incurred by the institution, according to the following categories (Expenses not attributable to a particular sport, such as general and administrative overhead, must be included only in the total expenses attributable to intercollegiate athletic activities.):

(i) Total expenses attributable to intercollegiate athletic activities.

(ii) Expenses attributable to football.

(iii) Expenses attributable to men's basketball.

(iv) Expenses attributable to women's basketball.

(v) Expenses attributable to all men's sports except football and basketball, combined.

(vi) Expenses attributable to all women's sports except basketball, combined.

(6) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, aggregately for men's teams, and aggregately for women's teams.

(7) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(8) The total amount of recruiting expenses incurred, aggregately for all men's teams, and aggregately for all women's teams.

(9)(i) The average annual institutional salary of the non-volunteer head coaches of all men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer head coaches of all women's teams, across all offered sports, on a per person and a per full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If a head coach has responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(10)(i) The average annual institutional salary of the non-volunteer assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer assistant coaches of women's teams, across all offered sports, on a per person and a full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If an assistant coach had responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(Approved by the Office of Management and Budget under control number 1845–0010)
(Authority: 20 U.S.C. 1092)

§ 668.48 [Amended]

10. Newly redesignated § 668.48 is amended as follows:

A. In paragraph (a)(1), by removing "By July 1, 1997, and by every July 1 every year thereafter, each" and adding, in its place, "Annually, by July 1, an"; by removing "shall" and adding in its place "must"; and by removing "an annual" and adding, in its place "a".

B. In paragraph (a)(1)(iii), by adding ", if applicable," before "transfer-out"; and by removing "§ 668.46(a)(1), (2), (3) and (4)" and adding, in its place, "§ 668.45(a)(1)";

C. In paragraph (a)(1)(iv), by adding ", if applicable," before "transfer-out"; and by removing "§ 668.46(a)(1), (2), (3) and (4)" and adding, in its place, "§ 668.45(a)(1)";

D. In paragraph (a)(1)(v), by adding ", if applicable," before "transfer-out" both times it appears; by removing " § 668.46(a)(2), (3), and (4)" and adding, in its place, "§ 668.45(a)(1)"; and by removing "shall" and adding, in its place, "must";

E. In paragraph (a)(1)(vi), by adding ", if applicable," before "transfer-out" both times it appears; by adding after "recent," "completing or graduating"; by removing "§ 668.46(a)(2), (3), and (4)" and adding in its place "§ 668.45(a)(1)"; and by removing "shall" and adding in its place "must"; and

F. In paragraph (b), by removing "§ 668.46" and adding in its place "§ 668.45"; by removing "(a)(1)(iii), (a)(1)(iv), and (a)(1)(v)" and adding in

their place "(a)(1)(iii) through (vi)"; and by adding ", if applicable," before "transfer-out."

G. At the end of the section, by replacing the OMB control number "1840–0719" with the number "1845–0004."

11. Appendix E is amended by removing the definition of "Murder," and by adding the following definitions before the definition of "Robbery:"

Appendix E to Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

* * * * *

Crime Definitions From the Uniform Crime Reporting Handbook

Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Criminal Homicide—Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

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Federal Register

Monday
November 1, 1999

Part X

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Part 1805

Community Development Financial Institutions Program; Interim Rule and Funds Availability Inviting Applications for the Community Development Financial Institutions (CDFI) Program—Core and Intermediary Components; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1805

RIN 1505–AA71

Community Development Financial Institutions Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Community Development Financial Institutions Program (CDFI Program) administered by the Community Development Financial Institutions Fund (Fund). The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Under the CDFI Program, the Fund provides financial and technical assistance in the form of grants, loans, equity investments and deposits to competitively selected CDFIs. The Fund provides such assistance to CDFIs to enhance their ability to make loans and investments, and to provide services for the benefit of designated investment areas, targeted populations, or both. After selection for such assistance, each CDFI will enter into an assistance agreement with the Fund that will include performance goals, matching funds requirements and reporting requirements. This revised interim rule: Revises, clarifies and streamlines CDFI certification and funding eligibility requirements; affords CDFIs greater flexibility in meeting matching funds requirements; clarifies the funding and certification applications' content requirements and evaluation criteria; reduces the frequency of previously approved collections of information by replacing some of the quarterly reporting requirements with semi-annual reporting requirements and other quarterly reporting requirements with annual reporting requirements; and makes other technical and clarifying changes that the Fund believes will inure to the benefit of CDFIs and entities proposing to become CDFIs.

DATES: Revised interim rule effective November 1, 1999; comments must be received in the offices of the Fund on or before January 14, 2000.

ADDRESSES: All comments concerning this interim rule should be addressed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's web site at http://www.treas.gov/cdfi.

FOR FURTHER INFORMATION CONTACT: Maurice A. Jones, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, at (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute.

The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. The initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left out of the economic mainstream.

Access to credit and investment capital is an essential ingredient for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people. Over the past several decades, community-based financial institutions have proven that strategic lending and investment activities tailored to the unique characteristics of underserved markets are highly effective in improving the economic well being of communities and the people who live there.

The Fund was established to promote economic revitalization and community development through, among other things, investment in and assistance to community development financial institutions (CDFIs), which specialize in serving underserved markets and the people who live there. CDFIs—while highly effective—are typically small in scale and often have difficulty raising the capital needed to meet the demands for their products and services. Under the CDFI Program, the Fund provides CDFIs with financial and technical assistance in the form of grants, loans, equity investments, and deposits in order to enhance their ability to make loans and investments, and provide services for the benefit of designated investment areas, targeted populations or both. Applicants participate in the CDFI Program through a competitive application and selection process in which the Fund makes funding decisions based on pre-established evaluation criteria. Program participants generally receive monies from the Fund only after being certified as a CDFI and entering into an assistance agreement with the Fund. These assistance agreements include performance goals, matching funds requirements and reporting requirements.

This issue of the **Federal Register** contains two separate Notices of Funds Availability (NOFAs) for the CDFI Program, one for the fifth round of the Core Component of the CDFI Program and another for the fourth round of the Intermediary Component of the CDFI Program. Under the Core Component, the Fund provides financial and technical assistance to CDFIs that directly serve their Target Markets through loans, investments and other activities, rather than primarily through the financing of other CDFIs. Under the Intermediary Component, the Fund provides financial and technical assistance to CDFIs that primarily provide assistance to other CDFIs and/or support the formation of CDFIs. In January 2000, the Fund expects to issue a NOFA for the third round of the Technical Assistance Component of the CDFI Program. Under the Technical Assistance Component, the Fund provides CDFIs with technical assistance in the form of grants that may be used to enhance the capacity of CDFIs through the acquisition of training services, consulting services, and/or technology. Since these regulations were last amended, the Fund has identified a number of provisions that need to be updated, clarified, expanded, and simplified.

II. Summary of Changes

Authorities

The current rule contains a list of authorities. This interim rule updates the list by adding 31 U.S.C. 321, which governs the promulgation of regulations. The current rule lists 12 U.S.C. 4703 note with a reference to Public Law

104–19. The Fund is deleting the reference to this public law, for purposes of regulatory economy and because there is more than one public law underlying the § 4703 note.

Relationship to Other Fund Programs

Section 1805.102(a) of the current rule prohibits, under certain circumstances, an Insured CDFI from receiving funding under both the Bank Enterprise Award (BEA) Program and the CDFI Program. This interim rule revises § 1805.102(a) to conform more closely with the counterpart provision contained in the BEA Program regulations (12 CFR 1806.102(a)) and the Bank Enterprise Act of 1991, as amended, (12 U.S.C. 1834a(g)).

Definitions

Section 1805.104 of the current rule contains a list of definitions. This interim rule revises § 1805.104 by amending several definitions and adding new definitions. First, § 1805.104(h) adds a new definition for "Community Development Financial Institution Intermediary" in recognition of the CDFI Program's Intermediary Component.

Second, § 1805.104(p) of the current rule contains a definition of "Development Investment." In § 1805.104(r) of this interim rule, the Fund is renaming "Development Investment" as "Equity Investment" and is adding an inclusive list of items that comprise "Equity Investments." This inclusive list is largely derived from the BEA Program regulation definition of equity investment at 12 CFR 1806.103(t). Under this interim rule, Equity Investments can comprise loans made on such terms that they have sufficient characteristics of equity and are considered as such by the Fund. Specifically, the Fund will generally consider a loan to be equity-like where: (1) the repayment of loan principal and/or interest is payable only out of available cash flow, so nonpayment of principal and/or interest will not automatically result in a default; (2) the maturity date of the loan is indeterminate in that the debtor is required to repay the principal on the maturity date only if it has sufficient resources; and (3) the loan is subordinated to payment obligations due all other creditors of the debtor, except other holders of similar type loans. The Fund also interprets "Equity Investment" to comprise secondary capital accounts established with low-income designated credit unions under 12 CFR 701.34. In order to distinguish "equity investments" made by the Fund from "Equity Investments" made by CDFIs, this interim rule distinguishes the two by capitalizing "Equity Investments" made by CDFIs.

Third, § 1805.104(q) of the current rule defines "Development Services" as activities that promote community development and are integral to lending and Development Investment activities and which prepare potential borrowers or investees to utilize the lending or investment products of the Awardee, its Affiliates, or its Community Partners. Section 1805.104(q) of this interim rule defines "Development Services" as activities that promote community development and are integral to the Applicant's provision of Financial Products and which prepare current or potential borrowers or investees to utilize the Financial Products of the Applicant. This interim rule replaces "Awardee" with "Applicant" because the provision of Development Services is necessary, as a threshold matter, for an institution to be eligible to apply for and receive assistance under the CDFI Program. This interim rule deletes references to the Awardee's Affiliates, or its Community Partners, because the Fund believes that the provision of Development Services must prepare the Awardee's current or potential borrowers or investees to utilize the Financial Products of the Awardee itself and not those of its Affiliates or its Community Partners. "Financial Products" is a new term defined in § 1805.104(s) of this interim rule, and is discussed below.

Fourth, § 1805.104(s) of this interim rule adds a definition of "Financial Products." This interim rule defines "Financial Products" as loans and Equity Investments and, in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs. The Fund is adding this definition as a shorthand definition for loans and Equity Investments made by CDFIs. The rationale for the Fund's expansion of the definition for CDFI Intermediaries is explained below under *Applicant Eligibility*.

Fifth, § 1805.104(ii) of this interim rule adds a definition of "Target Market" as comprising an Investment Area(s) and/or Targeted Population(s). The Fund is adding this definition to clarify the meaning of such term, which is contained throughout this interim rule.

Applicant Eligibility

Section 1805.200 of the current rule contains eligibility requirements for an entity to qualify as a CDFI and apply for assistance under the CDFI Program. Section 1805.200(a)(2) of the current rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if the Fund determines that such entity will meet the CDFI eligibility requirements within two years of entering into an Assistance Agreement with the Fund or such lesser period as may be set forth in an applicable Notice of Funds Availability (NOFA). The Fund believes that the time frame contained in the current rule is too indeterminate and is a frequent source of confusion for Applicants. The Fund believes that a clearer and more measurable time frame for determining eligibility is appropriate and will better serve the interests of the affected community. As a result, § 1805.200(a)(2) of this interim rule requires an entity to meet the CDFI eligibility requirements within 24 months from September 30 of the calendar year in which the applicable NOFA application deadline falls or such other period as may be set forth in the applicable NOFA. Under this interim rule, such other period can be a period lesser or greater than the 24 months described above.

Sections 1805.200(b)–(g) of the current rule contains six criteria that an entity must meet to qualify as a CDFI. In addition, §§ 1805.701(b)(1)–(8) of the current rule contains the application content requirements governing how an entity applying for assistance under the CDFI Program is to demonstrate that it meets the CDFI eligibility requirements described in § 1805.200 of the current rule. The Fund believes that the segregation of these two sections is too diffuse and too confusing for Applicants. The Fund also believes that §§ 1805.200(b)–(g) and 1805.701(b)(1)–(8) of the current rule should be consolidated for purposes of regulatory economy and efficiency. As a result, the Fund has decided to consolidate these sections into § 1805.201(b) of this interim rule.

Section 1805.200(b) of the current rule provides that in order to qualify as a CDFI, an entity must have a primary mission of community development. Section 1805.701(b)(1) of the current rule provides that in determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant and its Affiliates are principally directed toward serving an Investment Area(s), a Targeted Population(s), or a combination of the two. The Fund has decided to revise the primary mission test, because the Fund believes the current test to be: (1) partially duplicative of the Target Market eligibility test under §§ 1805.200(c) and 1805.701(b)(2) of the current rule, which

requires an Applicant to establish that its total activities (excluding information on any Affiliates) are principally directed toward serving an Investment Area(s), Targeted Population(s), or both; and (2) unduly burdensome on Applicants in terms of providing the requisite level of data. As a result, § 1805.201(b)(1) of this interim rule provides that in determining whether an Applicant meets the primary mission eligibility test, the Fund will consider whether the activities of the Applicant and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas). The Fund believes that § 1805.201(b)(1) of this interim rule will reduce burdens associated with meeting the primary mission eligibility test, because the market that an Applicant (and its Affiliates) must serve in order to meet this test is no longer restricted to Investment Areas or Targeted Populations. However, the Fund is still requiring Applicants to meet the same Target Market eligibility test of the current rule as described in § 1805.201(b)(3) of this interim rule.

The Fund intends to implement the primary mission eligibility test as follows. The Fund will review the incorporating documents, bylaws, annual reports, and/or other organizational documents of an Applicant and its Affiliates to determine whether the activities of the Applicant and its Affiliates, as a whole, are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of distressed communities. In circumstances where the organizational documents do not, in the judgment of the Fund, demonstrate such a primary mission, the Fund will examine whether the actual activities of the Applicant and its Affiliates, combined, demonstrates such a primary mission.

Sections 1805.200(d) and 1805.701(b)(4) of the current rule contain the Financing entity eligibility test, which provides that in order for an entity to qualify as a CDFI, such entity's predominant business activity must be, through arms-length transactions, the provision of loans, Development Investments, and/or other similar financing. Because the Act provides that a CDFI must provide Development Services in conjunction with loans and Equity Investments (12 U.S.C. 4702(5)(A)(iii)) and because Development Services support an Applicant's financing activities, § 1805.201(b)(2) of this interim rule provides that an entity's predominant business activity must be the provision, in arms-length transactions, of Financial Products, Development Services and/or other similar financing. The Fund interprets "other similar financing" as including: (1) pre-development grants, provided that, in the opinion of the Fund, they are offered to the entity's borrowers or potential borrowers; and (2) loan packaging, provided that, in the opinion of the Fund, the entity finances more than a nominal portion of the loan that is being packaged for another entity.

The Fund intends to implement the Financing entity eligibility test in § 1805.201(b)(2) of this interim rule as follows. First, the Fund will determine whether an entity's provision of Financial Products and Development Services, combined, comprise a simple majority of its activities (i.e., greater than 50 percent). If so, the entity will be deemed to have met the Financing entity eligibility test. If not, the Fund will then consider the extent to which the entity engages in other similar financing activities. If an entity's provision of Financial Products, Development Services and other similar financing activities, combined, comprises a simple majority of its activities, the entity will be deemed to have met the Financing entity eligibility test. If not, the Fund will then consider whether an entity's provision of Financial Products, Development Services and other similar financing activities, combined, comprise a plurality (the largest component) of the entity's activities. If an entity's provision of Financial Products, Development Services, and other similar financing activities, combined, comprise a plurality of its activities, the entity will be deemed to have met the Financing entity eligibility test.

Section 1805.701(b)(4)(ii)(C) of the current rule requires a Non-Regulated Applicant to demonstrate that it meets the Financing entity eligibility test by submitting, among other things, as many as three years of year-end financial statements. The Fund believes that this requirement is unduly burdensome on Applicants. Accordingly, § 1805.201(b)(2)(ii)(C) of this interim rule requires each Applicant to submit only its most recent year-end financial statements. However, the Fund reserves the right, consistent with § 1805.600 of this interim rule, to require Applicants to submit prior years' financial statements, if the Fund deems it appropriate. Furthermore, the Fund believes that in order to more effectively and accurately determine whether an Applicant's predominant business activity is the provision of Financial Products, Development Services, and/or other similar financing, the Fund needs to examine an Applicant's allocation of staff resources. Accordingly, § 1805.201(b)(2)(ii)(C) requires an Applicant to provide qualitative and quantitative information on the percentage of Applicant staff time dedicated to the provision of Financial Products, Development Services and/or other similar financing.

As discussed above, Financial Products comprise loans and Equity Investments and, in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs. The Fund's rationale for including the aforementioned grants and deposits of CDFI Intermediaries is that said grants and deposits will, consistent with § 1805.100 of this interim rule, facilitate the creation of a national network of financial institutions dedicated to community development. In some cases, grants and deposits constitute the primary means by which a CDFI Intermediary fulfills its role of supporting the creation and development of CDFIs. Further, grants constitute the most attractive form of capital to enable CDFIs to expand or to facilitate the start-up of new or emerging CDFIs. Deposits in insured credit union CDFIs in the form of Share Certificates constitute one of the most effective ways to provide capital to a credit union CDFI. The Fund believes that encouraging CDFI Intermediaries to provide capital to CDFIs and CDFIs in formation in the most effective and attractive forms possible furthers the purposes of the Act by enhancing the liquidity of CDFIs so that they may pursue economic revitalization in communities throughout the United States.

Section 1805.200(e) of the current rule contains the Development Services eligibility test, which provides that in order for an entity to qualify as a CDFI, the entity must directly, or through an Affiliate, provide Development Services. The Fund believes that this language should be expanded to reflect the fact that an entity may provide Development Services through a contractual agent. Accordingly, § 1805.201(b)(4) of this interim rule provides that the entity must directly, through an Affiliate or through a contract with another provider, provide Development Services.

Certification as a Community Development Financial Institution

Section 1805.201 of the current rule provides that an entity may apply for certification as a CDFI and also provides that the Fund may decertify a certified entity after a determination that it no longer meets the eligibility requirements of §§ 1805.200(b) through (h). The Fund believes that this language should be expanded to include the additional eligibility requirements that the Fund may impose in accordance with § 1805.200(a)(3) of the current rule. Accordingly, § 1805.201(a) of this interim rule provides that the Fund may decertify a certified CDFI after a determination that it no longer meets the eligibility requirements of § 1805.201(b), § 1805.200(b), or § 1805.200(a)(3).

Sections 1805.300 through 1805.302 of the current rule discuss in greater detail the Target Market eligibility test contained in § 1805.200(c) of the current rule. The Fund has decided to consolidate these sections into § 1805.201(b) of this interim rule for purposes of regulatory economy and efficiency. The Fund also has made numbering changes to the subsequent sections to conform with this consolidation.

Section 1805.301(d) of the current rule contains a listing of objective criteria of economic distress necessary for geographic unit(s) to qualify as an eligible Investment Area. These criteria include the percentage of the population living in poverty, the percentage of Low-Income households, the unemployment rate, the percentage of occupied distressed housing, and the county population loss. These criteria conform with the Act (12 U.S.C. 4702(16)(A)(i)), which confers upon the Fund the authority to expand these distress criteria to include rural population outmigration. Accordingly, the Fund has decided to add rural population net migration loss to the list of objective criteria of economic distress. This new objective criterion is found in § 1805.201(b)(3)(ii)(D)(5)(ii) of this interim rule, and provides that for areas located outside of a Metropolitan Area, the county net migration loss (outmigration less immigration) over the five year period preceding the most recent decennial census is at least 5 percent.

Section 1805.302(c) of the current rule provides that an Applicant shall provide its products and services in a manner consistent with the Equal Credit Opportunity Act, to the extent that the Applicant is subject to such Act. The Fund is deleting this language from this interim rule for purposes of regulatory economy and efficiency inasmuch as this requirement is already reflected in § 1805.905 of the current rule (§ 1805.805 of this interim rule), which provides that an Awardee shall comply with all applicable Federal laws.

Section 1805.302(a) of the current rule provides that a Targeted Population may include an identifiable group of individuals that lack adequate access to loans or equity investments. Section 1805.701(b)(3)(ii)(B) of the current rule provides that in order for such an identifiable group to meet the Target Market/Targeted Population eligibility test, an Applicant must submit to the Fund studies or analyses that evidence lack of adequate access to loans or equity investments. The Fund believes that the current rule needs to be clarified to reflect that the identifiable group of individuals must be drawn from the Applicant's service area, and to more accurately reflect the information the Fund needs in determining whether an identifiable group of individuals lacks adequate access to loans or Equity Investments. Accordingly, § 1805.201(b)(3)(iii)(B)(2) of this interim rule provides that an Applicant must submit: (1) A description of the Applicant's service area from which the Targeted Population is drawn; (2) studies, analyses or other information demonstrating that the identifiable group of individuals, either on a national basis or on a localized basis in the Applicant's service area, lacks adequate access to loans and Equity Investments; and (3) studies, analyses or other information demonstrating that the Applicant's clients, who comprise the identifiable group of individuals, lack adequate access to loans or Equity Investments.

Technical Assistance

Section 1805.403(d) of the current rule provides that applications for technical assistance will be evaluated pursuant to the competitive review criteria contained in the evaluation provisions of the current rule (§ 1805.802(b)). The Fund believes that, in the interest of economy and efficiency, it needs the flexibility to streamline the competitive review and evaluation of applications for technical assistance, particularly those received under the CDFI Program Technical Assistance Component in which the maximum amount of technical assistance typically awarded is $50,000. Section 1805.303(d) of this interim rule accomplishes this by providing that applications for technical assistance will be evaluated pursuant to the competitive review criteria contained in the evaluation provisions of this interim rule (§ 1805.701(b)), except as otherwise may be provided in the applicable NOFA. Section 1805.303(d) of this interim rule confers upon the Fund the discretion to select the specific evaluation criteria contained in § 1805.701(b) of this interim rule that it intends to utilize in evaluating applications for technical assistance. However, this discretion is constrained by the Act, which expressly prescribes specific evaluation criteria that also are contained in § 1805.701(b) of this interim rule. As a result, the Fund's selection of evaluation criteria for applications for technical assistance will, without exception, include all statutorily prescribed evaluation criteria.

Matching Funds Requirements

Section 1805.600 of the current rule provides that funds used to satisfy a legal requirement for obtaining funds under another Federal grant or award program cannot be used to satisfy the matching requirements set forth in this section of the current rule. The Fund has decided to clarify this section by providing that in the case of an applicant that is a previous Awardee under the CDFI Program, such applicant cannot reuse matching funds used to satisfy the matching funds requirements for its prior CDFI Program award. Accordingly, § 1805.500 of this interim rule provides that funds used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements.

Section 1805.600 of the current rule provides that funds spent by an Applicant for operating expenses prior to the calendar year in which the applicable application deadline falls cannot be used to meet the matching funds requirements. The Fund has decided to eliminate this provision from § 1805.500 of this interim rule to ease the burden on Applicants of substantiating that such matching funds were not used for operating expenses. However, the Fund will continue to determine, under § 1805.500 of this interim rule, whether matching funds expended prior to the execution of an Assistance Agreement promoted the purposes of the Comprehensive Business Plan that the Fund is supporting through its assistance.

Section 1805.602 of the current rule contains a "severe constraints waiver" in which Applicants with severe constraints on available sources of matching funds may seek a reduction in the matching funds requirements.

Section 1805.602(b) of the current rule limits the Fund's availability to grant severe constraints waivers to not more than 25 percent of the total funds available for "obligation" in any fiscal year. The Fund is adding an additional sentence to this section, in conformance with the Act, which specifically provides that not more than 25 percent of the total funds "disbursed" in any fiscal year may receive a severe constraints waiver (12 U.S.C. 4707(e)(3)). Accordingly, the second sentence of § 1805.502(b) of this interim rule provides that not more than 25 percent of the total funds disbursed in any fiscal year may be matched under a severe constraints waiver.

Section 1805.603 of the current rule provides that Applicants may use as matching funds monies that have been obtained or legally committed for up to one year prior to the publication of a NOFA, or such earlier date or period specified in the NOFA, for an applicable funding round. The current rule also provides that an Applicant shall raise the balance of its matching funds within the period set forth in the applicable NOFA. For purposes of regulatory economy and efficiency, the Fund has decided to streamline this section. As a result, § 1805.503 of this interim rule provides that Applicants shall satisfy matching funds requirements within the period set forth in the applicable NOFA.

Section 1805.604 of the current rule authorizes Applicants to utilize retained earnings as matching funds. Section 1805.604(d) of the current rule describes how retained earnings may be used by Insured Credit Unions to meet matching funds requirements. Insured Credit Unions are credit unions in which the member accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF). When the Fund originally promulgated the current rule it did not intend to exclude those credit unions whose member accounts are insured but not by the NCUSIF from § 1805.604(d) of the current rule. As a result, the Fund has revised § 1805.504(d) of this interim rule to cover all credit unions whose member accounts are insured and not just Insured Credit Unions.

Section 1805.604(d)(4)(i)(B) of the current rule requires Insured Credit Unions seeking to meet their matching funds requirements by utilizing retained earnings in the form of net capital accumulated since inception to increase their shares fourfold "within 18 months of the last day of the month prior to the month in which the Applicant is selected to receive assistance." The Fund believes that the time frame contained in the current rule is too indeterminate, too short and a frequent source of confusion for Applicants. The Fund believes that a longer, clearer and more measurable time frame is appropriate and would better serve the interests of the affected community. As a result, § 1805.504(d)(4)(i)(B) of this interim rule provides that the fourfold increase in shares must be achieved "within 24 months from September 30 of the calendar year in which the applicable application deadline falls."

Section 1805.604(d)(4)(i)(C) of the current rule requires that the fourfold increase in shares be maintained for the period of time covered by the Comprehensive Business Plan. The Fund is deleting this requirement in recognition of periodic fluctuations in share levels.

Section 1805.604(d)(4)(iii) of the current rule prescribes a bifurcated methodology for determining the appropriate baseline from which the fourfold increase in shares is measured. The Fund believes that the current bifurcated methodology is a frequent cause of confusion for Applicants. As a result, the Fund has decided to simplify this methodology through a fixed and more easily determinable baseline. Specifically, § 1805.504(d)(4)(iii) of this interim rule provides that the baseline will be as of September 30 of the calendar year in which the applicable application deadline falls.

Section 1805.604(e) of the current rule provides that an Applicant may only use retained earnings to meet matching funds requirements if it has liquidity (as determined by the Fund) in amounts equal to or greater than the amount of retained earnings that is proposed to be used to meet matching funds requirements. For purposes of regulatory economy and efficiency, the Fund has decided to eliminate this requirement.

Applications for Assistance

Section 1805.701 of the current rule provides that an Applicant may present its application in an order and format that it believes to be the most appropriate. The Fund has found that affording Applicants such flexibility makes it considerably more difficult for the Fund to evaluate applications. The Fund also believes that requiring all applications to be in the same order and format will inure to the benefit of all Applicants by ensuring a more efficient evaluation process. As a result, § 1805.601 of this interim rule deletes this provision.

Section 1805.701 of the current rule contains the application content requirements. The Fund has decided to revise this section (§ 1805.601 of this interim rule) to reduce burdens on Applicants.

For example, § 1805.701(d)(2)(iii)(B) of the current rule requires an Applicant to submit financial statements that utilize accrual based accounting methods. Section 1805.601(d)(4) of this interim rule continues to require the submission of financial statements but eliminates the requirement that such financial statements reflect accrual based accounting methods. The Fund believes that the elimination of this requirement will reduce burdens on those Applicants that currently utilize cash-based accounting methods. In addition, § 1805.701(e)(2) of the current rule requires an Applicant to submit a description of matching funds previously obtained or legally committed and related matching funds documentation in the form of agreements, letters of intent, and memoranda of understanding. Section 1805.601(d)(8)(ii) of this interim rule continues to require an Applicant to submit a description of matching funds previously obtained or legally committed, but deletes the requirement that an Applicant submit with its application related matching funds documentation. The Fund will only request such matching funds documentation from those Applicants that advance to the second phase of the Fund's substantive review process.

The Fund also has decided to reformat § 1805.601 of this interim rule to conform more closely with the Fund's new application packet. The new application packet contains several changes that also are intended to reduce burdens on Applicants. For example, the new application packet is a stand-alone document that identifies all application content requirements. Previous application packets directed Applicants to the current rule to ascertain the application content requirements. Applicants thus had to refer to two discrete documents in order to complete their applications. Such process has proven to be burdensome for Applicants in that it increased the amount of time it took them to complete the applications. The new application packet also contains clearer instructions, and identifies for each component part of the application the evaluation criteria and the points allocated for each evaluation criteria.

Furthermore, in accordance with the authority conferred to the Fund under the Act (12 U.S.C. 4704(b)(6)), the Fund is adding a new application content requirement to better ensure that the Fund's resources promote economic revitalization and community development. Specifically,

§ 1805.601(d)(13) of this interim rule requires each Applicant to describe the extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan.

Evaluation and Selection of Applications

Section 1805.800 of the current rule provides that part of the Fund's evaluation process may include an interview(s). In the past two funding rounds of the CDFI Program, the Fund has conducted interviews telephonically and in the offices of the Applicant. Section 1805.700 of this interim rule clarifies that the Fund may conduct not only telephonic interviews but also interviews in the form of site visits to an Applicant's and/or an Applicant's clients', borrowers', or investees' places of business.

Section 1805.802(b) of the current rule contains an inclusive listing of application evaluation factors. The Fund has reformatted and revised these factors to better reflect the Fund's intention to achieve maximum community impact under the CDFI Program and to conform with the Fund's new application packet. Section 1805.802(b)(1) of the current rule includes as an evaluation factor the quality of an Applicant's Comprehensive Business Plan. The Fund is deleting this specific evaluation factor from § 1805.701(b) of this interim rule, because the Fund believes this factor is already captured in other evaluation factors. The deletion of this factor is not intended by the Fund to have any substantive effect.

Consistent with its authority under the Act (12 U.S.C. 4706(a)(14)), the Fund has decided to add a new evaluation factor. Specifically, § 1805.701(b)(9) of this interim rule provides that the Fund will consider the extent of need for its assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market, and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan. In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) between the Fund and the Applicant, and whether the Applicant will expand the scope and volume of its activities with the help of additional assistance from the Fund. In the case of an Applicant that previously received funding under the CDFI Program, the Fund reserves the right to consider the extent to which the Applicant timely delivered its required reports to the Fund.

Notwithstanding these changes to § 1805.701(b) of this interim rule, the Fund reserves the right per § 1805.701(b)(10) of this interim rule to consider other evaluation factors in evaluating applications. The Fund anticipates that it will publish such other evaluation factors in the applicable NOFA and/or the applicable application packet.

Data Collection and Reporting

Section 1805.903(b) of the current rule requires Awardees to compile user profile information to assist the Fund in determining whether the Awardee's Target Market is adequately served. Section 1805.803(b) of this interim rule adds a provision that the Awardee's compilation of user profile information will assist the Fund in evaluating the impact of the CDFI Program. Specifically, the Fund will request that the Awardee report user profile information as part of the reporting requirement that will assist the Fund in evaluating the impact of the CDFI Program. This impact reporting requirement is contained in § 1805.903(c) of the current rule (§§ 1805.803(c) and 1805.803(e)(5) of this interim rule), and has been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1505–0154.

Section 1805.903(e)(2) of the current rule requires each Awardee to submit a quarterly report with information on the performance of its loans, Development Investments, Development Services, and Financial Services, unaudited financial statements, and information on portfolio performance. The Fund believes that these quarterly reporting requirements are unduly burdensome, and has decided to reduce the frequency of such reporting. In addition, the Fund has decided to narrow the scope of such reports. Specifically, § 1805.803(e)(2) of this interim rule requires each Awardee to submit a semi-annual report (i.e., two per year) consisting of its internal (unaudited) financial statements and information on compliance with its financial soundness covenants. The Fund is adding to the semi-annual report a requirement that the Awardee report on its compliance with its financial soundness covenants. This requirement is similar to an existing requirement contained in each Assistance Agreement and does not impose any additional burdens on Awardees. Awardees will still be required to report on the performance of their Financial Products, Development Services, Financial Services, and portfolio performance; however, such reporting requirements will be added to the impact reporting requirement described in § 1805.803(c) of this interim rule.

Section 1805.903(e)(3) of the current rule requires each Awardee to submit an annual report consisting of: (1) information on the Awardee's customer profile and the performance of its products and services; (2) information on its portfolio performance; (3) qualitative and quantitative information on the Awardee's performance goals; (4) information describing the manner in which Fund assistance and any corresponding matching funds were used; (5) certification that the Awardee continues to meet the eligibility requirements described in § 1805.200; and (6) its most recent audited financial statements prepared by an independent certified public accountant. The Fund has decided to remove several of the reporting requirements from the annual report and add them to the impact reporting requirement. In addition, the Fund is adding to the annual report a requirement that the Awardee provide a narrative description of the Awardee's activities in support of its Comprehensive Business Plan. This requirement is similar to an existing requirement contained in each Assistance Agreement, and does not impose any additional reporting burdens on Awardees. As a result, § 1805.803(e)(3) of this interim rule requires each Awardee to submit an annual report consisting of: (1) a narrative description of an Awardee's activities in support of its Comprehensive Business Plan; (2) qualitative and quantitative information on an Awardee's compliance with its performance goals; (3) information describing the manner in which Fund assistance and any corresponding matching funds were used; and (4) certification that the Awardee continues to meet the eligibility requirements described in § 1805.200.

In addition, the Fund has decided to bifurcate the due dates for submission of the audited statements of financial condition and the other reporting requirements contained in the annual report. The Fund understands that a longer period of time is required for an Awardee's independent certified public accountant to conduct and complete an

audit of the Awardee than is required for an Awardee to prepare and submit to the Fund the other reporting requirements contained in the annual report. As a result, § 1805.803(e)(4) of this interim rule generally affords an Awardee 120 days after the end of its fiscal year to submit its audited financial statements to the Fund, as opposed to § 1805.803(e)(3) of this interim rule which generally affords an Awardee 60 days to submit its annual report to the Fund.

III. Rulemaking Analysis

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

Because no notice of proposed rule making is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1505–0154. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedure Act

Because the revisions to this interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

Catalog of Federal Domestic Assistance Number

Community Development Financial Institutions Program—21.020.

List of Subjects in 12 CFR Part 1805

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 12 CFR part 1805 is revised to read as follows:

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

Subpart A—General Provisions

Sec.

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1805.802 Disbursement of funds.
1805.803 Data collection and reporting.
1805.804 Information.
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1805.806 Conflict of interest requirements.
1805.807 Lobbying restrictions.
1805.808 Criminal provisions.
1805.809 Fund deemed not to control.
1805.810 Limitation on liability.
1805.811 Fraud, waste and abuse.

Authority: 12 U.S.C. 4703, 4703 note, 4717; and 31 U.S.C. 321.

Subpart A—General Provisions

§ 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to facilitate the creation of a national network of financial institutions that is dedicated to community development.

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a competitive application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.* (1) No Community Development Financial Institution may receive a Bank Enterprise Award under the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

(i) An application pending for assistance under the Community Development Financial Institutions Program;

(ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Ever directly received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(2) An equity investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution, or deposits in an Insured Community Development Financial Institution, made by a Bank Enterprise Award Program Awardee may be used to meet the matching funds requirements described in subpart E of this part. Receipt of such equity investment, loan, or deposit does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

§ 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affiliate* means any company or entity that controls, is controlled by, or is under common control with another company;

(c) *Applicant* means any entity submitting an application for assistance under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

(e) *Assistance Agreement* means a formal agreement between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(f) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(g) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements described in § 1805.200;

(h) *Community Development Financial Institution Intermediary* (or *CDFI Intermediary*) means an entity that meets the CDFI Program eligibility requirements described in § 1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

(i) *Community Development Financial Institutions Program* (or *CDFI Program*) means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(j) *Community Facility* means a facility where health care, child care, educational, cultural, or social services are provided;

(k) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(l) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(m) *Community Partner* means a person (other than an individual) that provides loans, Equity Investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(n) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide loans, Equity Investments, or Development Services to an Investment Area(s) or a Targeted Population(s);

(o) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described under § 1805.601(d);

(p) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1));

(q) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(r) *Equity Investment* means an investment made by an Applicant which, in the judgment of the Fund, directly supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate. Equity Investments comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the Fund), or any other investment deemed to be an Equity Investment by the Fund;

(s) *Financial Products* means loans, Equity Investments and, in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs;

(t) *Financial Services* means checking, savings accounts, check-cashing, money orders, certified checks, automated teller machines, deposit-taking, and safe deposit box services;

(u) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(v) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(w) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(x) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination

with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(y) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(z) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(aa) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(bb) *Investment Area* means a geographic area meeting the requirements of § 1805.201(b)(3);

(cc) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and,

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(dd) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(ee) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(ff) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(gg) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in § 1805.200(b)(4);

(hh) *Targeted Population* means individuals or an identifiable group meeting the requirements of § 1805.201(b)(3); and

(ii) *Target Market* means an Investment Area(s) and/or a Targeted Population(s).

§ 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0154.

Subpart B—Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in § 1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(3) of this section, will be eligible to apply for assistance under this part.

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within 24 months from September 30 of the calendar year in which the applicable application deadline falls or such other period as may be set forth in an applicable NOFA. The Fund will not, however, disburse any financial assistance to such an entity before it meets the requirements described in this section.

(3) The Fund shall require an entity to meet any additional eligibility requirements that the Fund deems appropriate.

(4) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and § 1805.201(b).

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1), (2) and (3) of this section, an Applicant will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the Applicant's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in paragraph (b) of this section. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section, § 1805.200(b), or § 1805.200(a)(3) (if applicable) are no longer met.

(b) *Eligibility verification.* An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) and § 1805.200 by providing the information requested in paragraphs (b)(1) through (b)(7) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b) and § 1805.200.

(1) *Primary mission.* A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and

persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas).

(2) *Financing entity.* (i) A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. An Applicant may demonstrate that it is such an entity if it is a(n):

(A) Depository Institution Holding Company;

(B) Insured Depository Institution or Insured Credit Union; or

(C) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(ii) An Applicant described under:

(A) Paragraph (b)(2)(i)(A) of this section shall submit a copy of its organizing documents that indicate that it is a Depository Institution Holding Company;

(B) Paragraph (b)(2)(i)(B) of this section shall submit a copy of its current certificate of insurance issued by the Federal Deposit Insurance Corporation or the National Credit Union Administration; and

(C) Paragraph (b)(2)(i)(C) of this section shall submit a copy of its most recent year-end financial statements (and any notes or other supplemental information to its financial statements) documenting its assets dedicated to Financial Products, Development Services and/or other similar financing, and an explanation of how such assets support these activities. An Applicant also shall provide qualitative and quantitative information on the percentage of Applicant staff time dedicated to the provision of Financial Products, Development Services, and/or other similar financing.

(3) *Target Market.* (i) *General.* An Applicant shall provide a description of one or more Investment Areas and/or Targeted Populations that it serves, and shall demonstrate that its total activities are principally directed to serving the Investment Areas, Targeted Populations, or both. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) of this section.

(ii) *Investment Area.* (A) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

(*1*) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands); and either

(*2*) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans or Equity Investments as described in paragraph (b)(3)(ii)(E) of this section; or

(*3*) Encompasses or is located in an Empowerment Zone or Enterprise Community designated under § 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) *Geographic units.* Subject to the remainder of this paragraph (b)(3)(ii)(B), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American Indian or Alaskan Native areas. An Applicant may designate one or more Investment Areas as part of a single application.

(C) *Designation.* An Applicant may designate an Investment Area by selecting:

(*1*) A geographic unit(s) which individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(*2*) A group of contiguous geographic units which together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(D) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

(*1*) The percentage of the population living in poverty is at least 20 percent;

(*2*) In the case of an Investment Area located:

(*i*) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(*ii*) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(*3*) The unemployment rate is at least 1.5 times the national average;

(*4*) The percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent; or

(*5*) In areas located outside of a Metropolitan Area:

(*i*) The county population loss in the period between the most recent decennial census and the previous decennial census is at least 10 percent; or

(*ii*) The county net migration loss (outmigration minus immigration) over the five year period preceding the most recent decennial census is at least 5 percent.

(E) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if studies or other analyses provided by the Applicant adequately demonstrate a pattern of unmet needs for loans or Equity Investments within such area(s).

(F) *Serving Investment Areas.* An Applicant may serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents. To demonstrate that it is serving an Investment Area, an Applicant shall submit:

(*1*) A completed Investment Area Designation worksheet referenced in the application packet;

(*2*) A map of the designated area(s); and

(*3*) Studies or other analyses as described in paragraph (b)(3)(ii)(E) of this section.

(iii) *Targeted Population.* (A) *General.* Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to loans or Equity Investments in the Applicant's service area. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust

Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(B) *Serving A Targeted Population.* An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members. To demonstrate that it is serving a Targeted Population, an Applicant shall submit:

(*1*) In the case of a Low-Income Targeted Population, a description of the service area from which the Low-Income Targeted Population is drawn (which could be, for example, a local, regional or national service area); or

(*2*) In the case of a Targeted Population defined other than on the basis of Low-Income—

(*i*) A description of the service area from which the Targeted Population is drawn;

(*ii*) Studies, analyses or other information demonstrating that the identifiable group of individuals, either on a national basis or on a localized basis in the Applicant's service area, lacks adequate access to loans or Equity Investments; and

(*iii*) Studies, analyses or other information demonstrating that the Applicant's clients, who comprise the identifiable group of individuals, lack adequate access to loans or Equity Investments.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products. An Applicant shall submit a description of the Development Services to be offered, the expected provider of such services, and information on the persons expected to use such services.

(5) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise. An Applicant shall describe how it has and will maintain accountability to the residents of the Investment Area(s) or Targeted Population(s) it serves.

(6) *Non-government.* A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities. An Applicant shall submit copies of its articles of incorporation (or comparable organizing documents), charter, bylaws, or other legal documentation or opinions sufficient to verify that it is not a government entity.

(7) *Ownership.* An Applicant shall submit information indicating the portion of shares of all classes of voting stock that are held by each Insured Depository Institution or Depository Institution Holding Company investor (if any).

Subpart C—Use of Funds/Eligible Activities

§ 1805.300 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to provide Financial Products and Financial Services.

§ 1805.301 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of Consumer Loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

§ 1805.302 Restrictions on use of assistance.

(a) An Awardee shall use assistance provided by the Fund and its corresponding matching funds only for the eligible activities approved by the Fund and described in the Assistance Agreement.

(b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.303 Technical assistance.

(a) *General.* The Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.402.

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.601.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the competitive review criteria in subpart G of this part, except as otherwise may be provided in the applicable NOFA. In addition, the requirements for matching funds are not applicable to technical assistance requests.

Subpart D—Investment Instruments

§ 1805.400 Investment instruments—general.

The Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an Awardee. The Fund will provide financial assistance to an

Awardee through one or more of the investment instruments described in § 1805.401, and under such terms and conditions as described in this subpart D. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

§ 1805.401 Forms of investment instruments.

(a) *Equity.* The Fund may make nonvoting equity investments in an Awardee, including, without limitation, the purchase of nonvoting stock. Such stock shall be transferable and, in the discretion of the Fund, may provide for convertibility to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Capital grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs. Deposits in an Insured CDFI shall not be subject to any requirement for collateral or security.

§ 1805.402 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than $5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional assistance pursuant to this part up to a maximum of $3.75 million during the same three-year period. Such additional assistance:

(1) Shall be used only to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) An Awardee may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.701(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

§ 1805.403 Authority to sell.

The Fund may, at any time, sell its equity investments and loans, provided the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

Subpart E—Matching Funds Requirements

§ 1805.500 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.502, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements described in this section. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the Comprehensive Business Plan that the Fund is supporting through its assistance.

§ 1805.501 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (e.g., equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.502). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

§ 1805.502 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than $100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than $25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section. Additionally, not more than 25 percent of the total funds disbursed under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a "severe constraints waiver" as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a "severe constraints waiver" only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

§ 1805.503 Time frame for raising match.

Applicants shall satisfy matching funds requirements within the period set forth in the applicable NOFA.

§ 1805.504 Retained earnings.

(a) An Applicant that proposes to meet all or a portion of its matching funds requirements as set forth in this part by committing available earnings retained from its operations pursuant to § 1805.501(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings (excluding the after-tax value to an Applicant of any grants and other donated assets) that has occurred over the Applicant's most recent fiscal year (*e.g.*, retained earnings at the end of fiscal year 1999 less retained earnings at the end of fiscal year 1998); or

(ii) The annual average of such increases that have occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for an equity investment. The terms and conditions of financial assistance will be determined by the Fund.

(c)(1) In the case of a non-profit Applicant (other than a Credit Union), retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in an Applicant's net assets (excluding the amount of any grants and value of other donated assets) that has occurred over the Applicant's most recent fiscal year; or

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(d)(1) In the case of an insured credit union Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings that has occurred over the Applicant's most recent fiscal year;

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or

(iii) The entire retained earnings that has been accumulated since the inception of the Applicant provided that the conditions described in paragraph (d)(4) of this section are satisfied.

(2) For the purpose of paragraph (d)(4) of this section, retained earnings shall be comprised of "Regular Reserves", "Other Reserves" (excluding reserves specifically dedicated for losses), and "Undivided Earnings" as such terms are used in the National Credit Union Administration's accounting manual.

(3) Such retained earnings may be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(4) If the option described in paragraph (d)(1)(iii) of this section is used:

(i) The Assistance Agreement shall require that:

(A) An Awardee increase its member and/or non-member shares by an amount that is at least equal to four times the amount of retained earnings that is committed as matching funds; and

(B) Such increase be achieved within 24 months from September 30 of the calendar year in which the applicable application deadline falls;

(ii) The Applicant's Comprehensive Business Plan shall discuss its strategy for raising the required shares and the activities associated with such increased shares;

(iii) The level from which the increases in shares described in paragraph (d)(4)(i) of this section will be measured will be as of September 30 of the calendar year in which the applicable application deadline falls; and

(iv) Financial assistance shall be disbursed by the Fund only as the amount of increased shares described in paragraph (d)(4)(i)(A) of this section is achieved.

(5) The Fund will allow an Applicant to utilize the option described in paragraph (d)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in increasing its shares to the specified amounts.

(e) Retained earnings accumulated after the end of the Applicant's most recent fiscal year ending prior to the appropriate application deadline may not be used as matching funds.

Subpart F—Applications for Assistance

§ 1805.600 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with the regulations in this subpart and the applicable NOFA published in the **Federal Register**. The NOFA will advise potential Applicants on how to obtain an application packet and will establish deadlines and other requirements. The NOFA may specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

§ 1805.601 Application contents.

An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. Unless otherwise specified in an applicable NOFA, each application must contain the information specified in the application packet including the items specified in this section.

(a) *Award request.* An Applicant shall indicate:

(1) The dollar amount, form, rates, terms and conditions of financial assistance requested; and

(2) Any technical assistance needs for which it is requesting assistance.

(b) *Previous Awardees.* In the case of an Applicant that has previously received assistance under this part, the Applicant shall demonstrate that it:

(1) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

(2) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(c) *Time of operation.* At the time of submission of an application, an Applicant that has been in operation for:

(1) Three years or more shall submit information on its activities (as described in § 1805.201(b)(1) and (2) and paragraphs (d)(2) and (d)(9)(v) of this section) and financial statements (as described in paragraph (d)(4) of this section) for the three most recent fiscal years;

(2) For more than one year, but less than three years, shall submit information on its activities (as described in § 1805.201(b)(1) and (2) and paragraphs (d)(2) and (d)(9)(vi) of this section) and financial statements (as described in paragraph (d)(4) of this section) for each full fiscal year since its inception; or

(3) For less than one year, shall submit information on its activities and financial statements as described in paragraph (d) of this section.

(d) *Comprehensive Business Plan.* An Applicant shall submit a five-year Comprehensive Business Plan that addresses the items described in this paragraph (d). The Comprehensive Business Plan shall demonstrate that the Applicant shall have the capacity to operate as a CDFI upon receiving financial assistance from the Fund pursuant to this part.

(1) *Executive summary.* The executive summary shall include a description of the institution, products and services, markets served or to be served, accomplishments to date and key points of the Applicant's five year strategy, and other pertinent information.

(2) *Community development track record.* The Applicant shall describe its

community development impact over the past three years, or for its period of operation if less than three years. In addition, an Applicant with a prior history of serving Investment Area(s) or Targeted Population(s) shall describe its activities, operations and community benefits created for residents of the Investment Area(s) or Targeted Population(s) for such periods as described in paragraph (c) of this section.

(3) *Operational capacity and risk mitigation strategies.* An Applicant shall submit information on its policies and procedures for underwriting and approving loans and investments, monitoring its portfolio and internal controls and operations. An Applicant shall also submit a copy of its conflict of interest policies that are consistent with the requirements of § 1805.806.

(4) *Financial track record and strength.* An Applicant shall submit historic financial statements for such periods as specified in paragraph (c) of this section. An Applicant shall submit:

(i) Audited financial statements;

(ii) Financial statements that have been reviewed by a certified public accountant; or

(iii) Financial statements that have been reviewed by the Applicant's Appropriate Federal Banking Agency. Such statements should include balance sheets or statements of financial position, income and expense statements or statements of activities, and cash flow statements. The Applicant shall also provide information necessary to assess trends in financial and operating performance.

(5) *Capacity, skills and experience of the management team.* An Applicant shall provide information on the background and capacity of its management team, including key personnel and governing board members. The Applicant shall also provide information on any training or technical assistance needed to enhance the capacity of the organization to successfully carry out its Comprehensive Business Plan.

(6) *Market analysis.* An Applicant shall provide an analysis of its Target Market, including a description of the Target Market, and the extent of economic distress, an analysis of the needs of the Target Market for Financial Products, Financial Services and Development Services, and an analysis of the extent of demand within such Target Market for the Applicant's products and services. The Applicant also shall provide an assessment of any factors or trends that may affect the Applicant's ability to deliver its products and services within its Target Market.

(7) *Program design and implementation plan.* An Applicant shall:

(i) Describe the products and services it proposes to provide and analyze the competitiveness of such products and services in the Target Market;

(ii) Describe its strategy for delivering its products and services to its Target Market;

(iii) Describe how its proposed activities are consistent with existing economic, community and housing development plans adopted for an Investment Area(s) or Targeted Population(s);

(iv) Describe its plan to coordinate use of assistance from the Fund with existing government assistance programs and private sector resources;

(v) Describe how it will coordinate with community organizations, financial institutions, and Community Partners (if applicable) which will provide Equity Investments, loans, secondary markets, or other services in the Target Market; and

(vi) Discuss the extent of community support (if any) within the Target Market for its activities.

(8) *Financial projections and resources.* An Applicant shall provide :

(i) *Financial projections.* (A) Projections for each of the next five years which include pro forma balance sheets or statements of financial position, income and expense statements or statements of activities, and a description of any assumptions that underlie its projections; and

(B) Information to demonstrate that it has a plan for achieving or maintaining sustainability within the five-year period;

(ii) *Matching funds.* (A) A detailed description of its plans for raising matching funds, including funds previously obtained or legally committed to match the amount of financial assistance requested from the Fund; and

(B) An indication of the extent to which such matching funds will be derived from private, nongovernment sources. Such description shall include the name of the source, total amount of such match, the date the matching funds were obtained or legally committed, if applicable, the extent to which, and for what purpose, such matching funds have been used to date, and terms and restrictions on use for each matching source, including any restriction that might reasonably be construed as a limitation on the ability of the Applicant to use the funds for matching purposes; and

(iii) *Severe constraints waiver.* If the Applicant is requesting a "severe constraints waiver" of any matching requirements, it shall submit the information requested in § 1805.502.

(9) *Projected community impact.* An Applicant shall provide:

(i) Estimates of the volume of new activity to be achieved within its Target Market assuming that assistance is provided by the Fund;

(ii) A description of the anticipated incremental increases in activity to be achieved with assistance provided by the Fund and matching funds within the Target Market;

(iii) An estimate of the benefits expected to be created within its Target Market over the next five years;

(iv) The extent to which the Applicant will concentrate its activities within its Target Market;

(v) A description of how the Applicant will measure the benefits created as a result of its activities within its Target Market; and

(vi) In the case of an Applicant with a prior history of serving a Target Market, an explanation of how the Applicant will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(10) *Risks and assumptions.* An Applicant shall identify and discuss critical risks (including strategies to mitigate risk) and assumptions contained in its Comprehensive Business Plan, and any significant impediments to the Plan's implementation.

(11) *Schedule.* An Applicant shall provide a schedule indicating the timing of major events necessary to realize the objectives of its Comprehensive Business Plan.

(12) *Community Partnership.* In the case of an Applicant submitting an application with a Community Partner, the Applicant shall:

(i) Describe how the Applicant and the Community Partner will participate in carrying out the Community Partnership and how the partnership will enhance activities serving the Investment Area(s) or Targeted Population(s);

(ii) Demonstrate that the Community Partnership activities are consistent with the Comprehensive Business Plan;

(iii) Provide information necessary to evaluate such an application as described under § 1805.701(b)(6);

(iv) Include a copy of any written agreement between the Applicant and the Community Partner related to the Community Partnership; and

(v) Provide information to demonstrate that the Applicant meets the eligibility requirements described in § 1805.200 and satisfies the selection criteria described in subpart G of this part. (A Community Partner shall not be required to meet the eligibility requirements described in § 1805.200.)

(13) *Effective use of Fund resources.* An Applicant shall describe the extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan.

(e) *Community ownership and governance.* An Applicant shall provide information to demonstrate the extent to which the Applicant is, or will be, Community-Owned or Community-Governed.

(f) *Environmental information.* The Applicant shall provide sufficient information regarding the potential environmental impact of its proposed activities in order for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter.

(g) *Applicant certification.* The Applicant and Community Partner (if applicable) shall certify that:

(1) It possesses the legal authority to apply for assistance from the Fund;

(2) The application has been duly authorized by its governing body and duly executed;

(3) It will not use any Fund resources for lobbying activities as set forth in § 1805.807; and

(4) It will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

Subpart G—Evaluation and Selection of Applications

§ 1805.700 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the Fund, to receive assistance based on a review process, that could include an interview(s) and/or site visit(s), that is intended to:

(a) Ensure that Applicants are evaluated on a competitive basis in a fair and consistent manner;

(b) Take into consideration the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Awardee can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact; and

(d) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States.

§ 1805.701 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described in § 1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the Fund reserves the right to request additional information from the Applicant, if the Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the Fund will evaluate the Applicant's likelihood of success in meeting the goals of the Comprehensive Business Plan and achieving community development impact, by considering factors such as:

(1) Community development track record (e.g., in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market);

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills and experience of the management team;

(5) Solid understanding of its market context, including its analysis of current and prospective customers, the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria, the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Quality program design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, delivery strategy, and coordination with other institutions and/or a Community Partner, or participation in a secondary market for purposes of increasing the Applicant's resources. In the case of an applicant submitting an application with a Community Partner, the Fund will evaluate the extent to which the Community Partner will participate in carrying out the activities of the Community Partnership; the extent to which the Community Partner will enhance the likelihood of success of the Comprehensive Business Plan; and the extent to which service to the designated Target Market will be better performed by a Community Partnership than by the Applicant alone;

(7) Projections for financial performance, capitalization and raising needed external resources, including the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan. In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the Fund, and whether the Applicant will, with additional assistance from the Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities;

(10) The Fund may consider any other factors, as it deems appropriate, in reviewing an application.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund will consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(d) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable NOFA.

Subpart H—Terms and Conditions of Assistance

§ 1805.800 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the maximum extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

§ 1805.801 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the Fund and an Awardee or as provided in paragraph (c) of this section. If a Community Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardees application. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Fund's regulations or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take any other action as permitted by the terms of the Assistance Agreement.

(d) In the case of an Insured Depository Institution, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1805.802 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured firm commitments for the matching funds required for such assistance. At a minimum, a firm commitment must consist of a binding written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursal of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

§ 1805.803 Data collection and reporting.

(a) *Data—General.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund which are necessary to:

(1) Disclose the manner in which Fund assistance is used;

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or

members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Review.* (1) At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement.

(2) An Awardee shall submit within 60 days after the end of each semi-annual period, or within some other period as may be agreed to in the Assistance Agreement, internal financial statements covering the semi-annual reporting period (i.e., two periods per year) and information on its compliance with its financial soundness covenants.

(3) An Awardee shall submit a report within 60 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following:

(i) A narrative description of an Awardee's activities in support of its Comprehensive Business Plan;

(ii) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals;

(iii) Information describing the manner in which Fund assistance and any corresponding matching funds were used. The Fund will use such information to verify that assistance was used in a manner consistent with the Assistance Agreement; and certification that an Awardee continues to meet the eligibility requirements described in § 1805.200.

(4) An Awardee shall submit within 120 days after the end of its fiscal year, or within some other period as may be agreed to in the Assistance Agreement, fiscal year end statements of financial condition audited by an independent certified public accountant. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Offices Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations), as applicable.

(5) An Awardee shall submit a report within 120 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following information:

(i) The Awardee's customer profile;

(ii) Awardee activities including Financial Products and Development Services;

(iii) Awardee portfolio quality;

(iv) The Awardee's financial condition; and

(v) The Awardee's community development impact.

(6) The Fund shall make reports described in paragraphs (e)(2) and (e)(3) of this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies.* (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by the Appropriate Federal Banking Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

(4) Notwithstanding paragraphs (f) (1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the institutions implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of a Appropriate Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency, and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet (http://www.whitehouse.gov/OMB/grants/index.html); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

§ 1805.804 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

§ 1805.805 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

§ 1805.806 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Equity Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Equity Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

§ 1805.807 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1805.808 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all Awardees and Insiders.

§ 1805.809 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.810 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.811 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: October 25, 1999.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Core Component

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.) (the "Act") authorizes the Community Development Financial Institutions Fund (the "Fund") of the U.S. Department of the Treasury to select and provide financial and technical assistance to eligible applicants under the Community Development Financial Institutions ("CDFI") Program. The interim rule (12 CFR part 1805), most recently published in the **Federal Register** on April 4, 1997 (62 FR 16444), and now revised and published elsewhere in this issue of the **Federal Register**, provides guidance on the contents of the necessary application materials, evaluation criteria and other program requirements. More detailed application content requirements are found in the application packet. While the Fund encourages applicants to review the interim rule, all of the application content requirements and the evaluation criteria contained in the interim rule are also contained in the application packet. Subject to funding availability, the Fund intends to award up to $50 million in appropriated funds under this NOFA and expects to issue approximately 45 to 65 awards. The Fund reserves the right to award in excess of $50 million in appropriated funds under this NOFA provided that the funds are available and the Fund deems it appropriate. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

This NOFA is issued in connection with the Core Component of the CDFI Program. The Core Component provides direct assistance to CDFIs that serve their target markets through loans, investments and other activities. (These activities generally do not include the financing of other CDFIs. Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the fourth round of the Intermediary Component of the CDFI Program. The Intermediary Component provides financial assistance and technical assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs.)

DATES: Applications may be submitted at any time following November 1, 1999. The deadline for receipt of an application is 6:00 p.m. EST on January 20, 2000. Applications received in the offices of the Fund after that date and time will be rejected and returned to the sender.

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 electronically or by facsimile 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 web site at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients for creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program funds and supports a national network of financial institutions that is specifically dedicated to funding and supporting community development. This strategy builds strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. The Act authorizes the Fund to select entities to receive financial and technical assistance. This NOFA invites applications from eligible organizations for financial assistance, technical assistance, or both, for the purpose of promoting community development activities.

The program connected with this NOFA constitutes the Core Component of the CDFI Program, involving direct financial assistance and technical assistance (TA) to CDFIs that serve their target markets through loans, investments and other activities. Under this Core Component NOFA, the Fund anticipates a maximum award amount of $2.5 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate.

Previous awardees under the CDFI Program are eligible to apply under this NOFA, but such applicants must be aware that success in a previous round should not be considered indicative of success under this NOFA. In addition, organizations will not be penalized for having received awards in previous funding rounds, except to the extent that:

(1) The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its subsidiaries and affiliates during any three year period; and

(2) An applicant that is a previous awardee has failed to meet its performance goals, financial soundness covenants (if applicable) and/or other requirements contained in the previously executed assistance agreement(s).

This NOFA is not intended to support Intermediary CDFIs (those CDFIs that primarily fund other CDFIs). Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the fourth round of the Intermediary Component of the CDFI Program. The Intermediary Component NOFA is issued in recognition of the fact that Intermediary CDFIs can reach specialized niches in their financing of CDFIs that the Fund itself cannot reach as effectively under the Core Component.

II. Eligibility

The Act and the interim rule, as revised, specify the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this Core Component NOFA. At the time an entity submits its application, the entity must be a duly organized and validly existing legal entity under the laws of the jurisdiction in which it is incorporated or otherwise established. An entity must meet, or propose to meet, CDFI eligibility

requirements. In general, a CDFI and its affiliates must collectively have a primary mission of promoting community development. In addition, the applicant organization must: provide lending or equity investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a non-government entity. If an applicant is an insured depository institution holding company or an affiliate of an insured depository holding company, the applicant and its affiliates must collectively meet all of the aforementioned requirements. If an applicant is a subsidiary of an insured depository institution, the insured depository institution and all of its subsidiaries must collectively meet all of the aforementioned requirements.

If the applicant does not meet the CDFI eligibility requirements, the application shall include a realistic plan for the applicant to meet the criteria by September 30, 2002 (which period may be extended at the sole discretion of the Fund). In no event will the Fund disburse financial assistance to the applicant until the applicant can be certified as a CDFI. Further details regarding eligibility and other program requirements are found in the application packet.

III. Types of Assistance

An applicant may submit an application for financial assistance, TA, or both, under this Core Component NOFA. Financial assistance may be provided through an equity investment (including, in the case of certain insured credit unions, secondary capital accounts), a grant, loan, deposit, credit union shares, or any combination thereof. Applicants for financial assistance shall indicate the dollar amount, form, and terms and conditions of the assistance requested. Applicants for TA under this NOFA shall describe the type(s) of TA requested, the provider(s) of the TA, the cost of the TA, and a narrative justification for their TA request.

IV. Application Packet

An applicant under this NOFA, whether applying for financial assistance, TA, or both, must submit the materials described in the application packet.

V. Matching Funds

Applicants responding to this NOFA must obtain matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of financial assistance provided by the Fund (matching funds are not required for TA). Matching funds must be at least comparable in form and value to the financial assistance provided by the Fund. Non-Federal funds obtained or legally committed on or after January 1, 1998, and before August 31, 2001, may be considered when determining matching funds availability. The Fund reserves the right to recapture and reprogram funds if an applicant fails to raise the required matching funds by August 31, 2001, or to grant an extension of such matching funds deadline for specific applicants selected for assistance, if the Fund deems it appropriate. Funds used by an applicant as matching funds for a previous award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement.

VI. Evaluation

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, applications will be evaluated by the Fund on a competitive basis in accordance with the criteria described in this NOFA. In conducting its substantive review, the Fund will evaluate the following criteria:

(1) The applicant's ability to carry out its Comprehensive Business Plan and create community development impact (the Ability criterion);

(2) The quality of the applicant's strategy for carrying out its Comprehensive Business Plan and for creating community development impact (the Strategy criterion); and

(3) the extent to which an award to the applicant will maximize the effective use of the Fund's resources (the Effective Use criterion).

In addition, the Fund will consider the institutional and geographic diversity of applicants in making its funding determinations.

Phase One

In Phase One of the substantive review, each Fund reader(s) will evaluate applications using a 100-point scale, as follows:

(a) Ability to Carry Out the Comprehensive Business Plan and Create Community Development Impact: 50-point maximum, with a minimum score of 25 points required to be passed on for Phase Two review. The score of the Ability criterion is based on a composite assessment of an applicant's organizational strengths and weaknesses under the four sub-criteria listed below. Such scoring reflects different weighting of the sub-criteria depending on whether an applicant is a start-up organization or an established organization. The Fund defines a start-up organization as an entity that has been in operation two years or less, as of the date of this NOFA (meaning, for purposes of this NOFA, having incurred initial operating expenses on or after November 1, 1997). For purposes of this NOFA, start-up organizations will not be evaluated under the Ability criterion on their previous community development and financial track records. Instead, start-up organizations will be scored entirely on operational and management capacity.

Under the Ability section of the application, the Fund will evaluate the following four sub-criteria:

(1) Community development track record: 12-point maximum (established organizations only);

(2) Operational capacity and risk mitigation strategies: 12-point maximum (established organizations), 20-point maximum (start-ups);

(3) Financial track record and strength: 12-point maximum (established organizations only); and

(4) Capacity, skills and experience of the management team: 14-point maximum (established organizations), 30-point maximum (start-ups).

Quality of the Strategy for Carrying out the Comprehensive Business Plan and for Creating Impact: 40-point maximum with a minimum of 20 points required to be passed on for Phase Two review. Under the Strategy section of the application, the Fund will evaluate the following four sub-criteria:

(1) The applicant's understanding of its market: 10-point maximum;

(2) Program design and implementation plan: 10-point maximum;

(3) Projections for financial performance and raising needed resources: 10-point maximum; and

(4) Projections for generating, measuring and evaluating community development impact: 10-point maximum.

In the case of an applicant that has previously received assistance from the Fund under the CDFI Program, the Fund will consider whether the applicant will expand its operations into a new target market, offer more products or services, and/or increase the volume of its activities.

Maximizing Effective Use of Fund Resources: 10-point maximum, with no minimum score required to be passed on for Phase Two review. The Fund will consider:

(1) The extent to which the applicant needs the Fund's assistance to carry out its Comprehensive Business Plan; and

(2) The extent of economic distress in the applicant's target market.

In addition, in the case of an applicant that has previously received assistance from the Fund under the CDFI Program, the Fund will consider the applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable) and other requirements contained in the assistance agreement(s) with the Fund, and the benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance.

Phase Two

Once the initial evaluation is completed, the Fund will determine which applications will receive further consideration for funding based on application scores (standardized if deemed appropriate), recommendations of individuals performing initial reviews and the amount of funds available. Applicants that advance to Phase Two may receive a site visit and/or telephone interview(s) conducted by a Fund reviewer for the purpose of obtaining clarifying or confirming information. At this point in the process, applicants will be required to submit additional information, as set forth in detail in the application packet. After conducting such site visits/telephone interview(s), the Fund reviewer will evaluate applications in accordance with the evaluation criteria outlined above and prepare a recommendation memorandum containing recommendations on the type and amount of assistance that should be provided to the applicant.

A final review panel comprised of Fund staff will consider the Fund reviewer's recommendation memorandum and make a final recommendation to the Fund's selecting official. In making its recommendations, the final review panel also may consider the institutional diversity and geographic diversity of applicants (e.g., recommending a CDFI from a State in which the Fund has not previously made an award over a CDFI in a State in which the Fund has already made numerous awards).

The Fund's selecting official will make a final funding determination based on the applicant's file, including, without limitation, reader(s)/reviewer(s) recommendations and the panel's recommendation, and the amount of funds available. In the case of regulated CDFIs, the selecting official will also take into consideration the views of the appropriate Federal banking agencies.

The Fund reserves the right to change these evaluation procedures if the Fund deems it appropriate.

VII. Information Sessions

In connection with this NOFA and the NOFA for the Intermediary Component, the Fund will conduct Information Sessions to disseminate information to organizations contemplating applying for, and other organizations interested in learning about, the CDFI Program. Registration is required and registration in advance is preferred. The Fund will conduct 12 in-person Information Sessions, beginning November 8, 1999, as follows:

Atlanta, GA, November 9, 1999;
Boston, MA, November 15, 1999;
Chicago, IL, November 8, 1999;
Cleveland, OH, November 9, 1999;
Dallas, TX, November 9, 1999;
Memphis, TN, November 8, 1999;
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New York, NY, November 16, 1999;
Salt Lake City, UT, November 16, 1999
San Diego, CA, November 19, 1999;
San Francisco, CA, November 22, 1999; and
Seattle, WA, November 15, 1999.

In addition to the in-person sessions listed above, the Fund will broadcast an Information Session using interactive video-teleconferencing technology on November 16, 1999, from 1:00 p.m. to 4:00 p.m EST. Registration is required and registration in advance is preferred. 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 73 cities: Albany, NY: Albuquerque, NM; Anchorage, AK; Atlanta, GA; Baltimore, MD; Bangor, ME; Beaumont, TX; Birmingham, AL; Boise, ID; Buffalo, NY; Burlington, VT; Casper, WY; Charleston, WV; Chicago, IL; Cincinnati, OH; Columbia, SC; Columbus, OH; Denver, CO; Des Moines, IA; Detroit, MI; Fargo, ND; Flint, MI; 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; Lanham, MD; Las Vegas, NV; Little Rock, AR; Los Angeles, CA; Louisville, KY; Lubbock, TX; Manchester, NH; Miami, FL; Milwaukee, WI; Minneapolis/St. Paul, MN; Nashville, TN; New Orleans, LA; 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; San Antonio, TX; San Francisco, CA; San Juan, PR; Santa Ana, CA; Shreveport, LA; Sioux Falls, SD; Spokane, WA; Springfield, IL; Syracuse, NY; Tampa, FL; Tucson, AZ; Tulsa, OK; Washington, DC; and Wilmington, DE.

For more information, or to register for an Information Session, please contact the Fund at (202) 622–8662 or visit the Fund's web site at www.treas.gov/cdfi.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, and 4717; 12 CFR part 1805.

Dated: October 25, 1999.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 99–28282 Filed 10–29–99; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions (CDFI) Program—Intermediary Component

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.*) (the "Act") authorizes the Community Development Financial Institutions Fund ("the Fund") to select and provide assistance to eligible applicants under the Community Development Financial Institutions ("CDFI") Program. The interim rule (12 CFR part 1805), most recently published in the **Federal Register** on April 4, 1997 (62 FR 16444), and now revised and published elsewhere in this issue of the **Federal Register**, provides guidance on the contents of application materials, evaluation criteria and other program requirements. More detailed application content requirements are found in the application packet. While the Fund encourages applicants to review the interim rule, all of the application content requirements and the evaluation criteria contained in the interim rule are also contained in the application packet. Subject to the availability of funds, the Fund currently anticipates making awards of up to $6 million in appropriated funds under this NOFA and expects to make four to ten awards. The Fund reserves the right to award in

excess of $6 million in appropriated funds under this NOFA provided that funds are available and the Fund deems it appropriate. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

This NOFA is issued in connection with the Intermediary Component of the CDFI Program. The Intermediary Component provides financial assistance and technical assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the fifth round of the Core Component of the CDFI Program, with respect to which the Fund intends to make available up to $50 million in appropriated funds. The Core Component provides assistance to CDFIs that directly serve their target markets through loans, investments and other activities, not including the financing of other CDFIs.

DATES: Applications may be submitted at any time after November 1, 1999. The deadline for receipt of an application is 6:00 p.m. EST on January 18, 2000. Applications received in the offices of the Fund after that date and time will be rejected and returned to the sender.

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 to the Fund electronically or by facsimile 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 any 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 on (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 web site at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients for creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program funds and supports a national network of financial institutions that is specifically dedicated to community development. This strategy builds strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. The Act authorizes the Fund to select entities to receive financial and technical assistance. This NOFA invites applications from eligible organizations for financial assistance, technical assistance, or both, for the purpose of promoting community development activities.

The program connected with this NOFA constitutes the Intermediary Component of the CDFI Program, involving financial assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. Under this Intermediary Component NOFA, the Fund anticipates a maximum award amount of $1.5 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate.

Previous awardees under the CDFI Program are eligible to apply under this NOFA, but such applicants must be aware that success in a previous round should not be considered indicative of success under this NOFA. In addition, organizations will not be penalized for having received awards in previous funding rounds, except to the extent that:

(1) The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its subsidiaries and affiliates during any three year period; and

(2) An applicant that is a previous awardee has failed to meet its performance goals, financial soundness covenants (if applicable) and/or other requirements contained in the previously executed assistance agreement(s).

The Fund recognizes that there are in existence certain intermediary CDFIs, and that others may be created over time, that focus their financing activities primarily on financing other CDFIs. Such institutions may have knowledge and capacity to develop and implement a specialized niche or niches in their financing of CDFIs and/or CDFIs in formation. The Fund believes that providing financial assistance to such intermediaries can be an effective way to enhance its support of the CDFI industry by reaching CDFIs that the Fund itself cannot reach as effectively under the Core Component. An intermediary CDFI may, for example, have a specialized niche or niches focusing on financing a specific type or types of CDFIs, providing small amounts of capital per CDFI, financing CDFIs with specialized risk levels, or financing institutions seeking to become CDFIs. By providing financial assistance to specialized intermediaries, the Fund believes it can leverage the expertise of such intermediaries and strengthen the Fund's capacity to support the development and enhancement of the CDFI industry. This NOFA invites applications from CDFIs, and organizations seeking to become CDFIs, that are or plan to become a specialized CDFI intermediary, focusing on providing loans to, or investments in, other CDFIs and/or to support the formation of CDFIs. This NOFA is not intended and should not be construed to allow an applicant to file a joint application on behalf of a group of other CDFIs, but rather to provide financial assistance to intermediaries that provide financing, in arms-length transactions, to other CDFIs and/or to support the formation of CDFIs.

This NOFA implements the fourth round of the Intermediary Component.

II. Eligibility

The Act and the interim rule, as revised, specify the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this Intermediary Component NOFA. At the time an entity submits its application, the entity must be a duly organized and validly existing legal entity under the laws of the jurisdiction in which it is incorporated or otherwise established. An entity must meet, or propose to meet, the CDFI eligibility requirements. In general, a CDFI and its affiliates must collectively have a primary mission of promoting community development. In addition, the applicant organization must provide lending or equity investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a non-governmental entity.

In addition, this NOFA is limited to applicants that satisfy the following requirements:

(1) The applicant's financial products (loans, equity investments, grants, and deposits) must primarily focus on financing other CDFIs and/or supporting the formation of CDFIs; or

(2) If (a) the applicant does not meet the CDFI eligibility requirements; or

(b) if the applicant's financial products do not primarily focus on financing and/or supporting the formation of CDFIs at the time of application, the application shall include a realistic plan for the applicant to meet both criteria (a) and (b) by September 30, 2001 (which period may be extended at the sole discretion of the Fund). In no event will the Fund disburse financial or technical assistance to the applicant until the applicant can be certified as a CDFI and demonstrates that its products primarily focus on other CDFIs and/or the formation of CDFIs. Further details regarding eligibility and other program requirements are found in the application packet.

III. Types of Assistance

An applicant may submit an application for financial assistance or technical assistance (TA) under this NOFA. Financial assistance may be provided in the form of an equity investment, loan, or grant (or a combination of these financial assistance instruments). Applicants for financial assistance shall indicate the dollar amount, form, terms, and conditions of the assistance requested. Applicants for TA under this NOFA shall describe the type(s) of TA requested, the provider(s) of the TA, the cost of the TA, and a narrative justification for their TA request.

IV. Application Packet

An applicant under this NOFA, whether applying for financial assistance, TA, or both, must submit the materials described in the application packet.

V. Matching Funds

Applicants responding to this NOFA must obtain matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of assistance provided by the Fund. Matching funds must be at least comparable in form and value to the assistance provided by the Fund. Non-Federal funds obtained or legally committed on or after January 1, 1998, and before August 31, 2001, may be considered when determining matching funds availability. The Fund reserves the right to recapture and reprogram funds if an applicant fails to raise the required matching funds by August 31, 2001, or to grant an extension of such matching funds deadline for specific applicants selected for assistance, if the Fund deems it appropriate. Funds used by an applicant as matching funds for a previous award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement.

VI. Evaluation

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, applications will be evaluated by the Fund on a competitive basis in accordance with the criteria described in this NOFA. In conducting its substantive review, the Fund will evaluate the following criteria:

(1) The applicant's ability to carry out its Comprehensive Business Plan and create community development impact (the Ability criterion);

(2) The quality of the applicant's strategy for carrying out its Comprehensive Business Plan and for creating community development impact (the Strategy criterion); and

(3) The extent to which an award to the applicant will maximize the effective use of the Fund's resources (the Effective Use criterion).

In addition, the Fund will consider the institutional and geographic diversity of applicants in making its funding determinations.

Phase One

In Phase One of the substantive review, each Fund reader(s) will evaluate applications using a 100-point scale, as follows:

Ability to Carry Out the Comprehensive Business Plan and Create Community Development Impact: 50-point maximum, with a minimum score of 25 points required to be passed on for Phase Two review. The score of the Ability criterion is based on a composite assessment of an applicant's organizational strengths and weaknesses under the four sub-criteria listed below. Such scoring reflects different weighting of the sub-criteria depending on whether an applicant is a start-up organization or an established organization. The Fund defines a start-up organization as an entity that has been in operation for two years or less, as of the date of this NOFA (meaning, for purposes of this NOFA, having incurred initial operating expenses on or after November 1, 1997). For purposes of this NOFA, start-up organizations will not be evaluated under the Ability criterion on their previous community development and financial track records. Instead, start-up organizations will be scored entirely on operational and management capacity.

Under the Ability section of the application, the Fund will evaluate the following four sub-criteria:

(1) Community development track record: 12-point maximum (established organizations only);

(2) Operational capacity and risk mitigation strategies: 12-point maximum (established organizations), 20-point maximum (start-ups);

(3) Financial track record and strength: 12-point maximum (established organizations only); and

(4) Capacity, skills and experience of the management team: 14-point maximum (established organizations), 30-point maximum (start-ups).

Quality of the Strategy for Carrying Out the Comprehensive Business Plan and for Creating Impact: 40-point maximum with a minimum of 20 points required to be passed on for Phase Two review. Under the Strategy section of the application, the Fund will evaluate the following four sub-criteria:

(1) The applicant's understanding of its market: 10-point maximum;

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In the case of an applicant that has previously received assistance from the Fund under the CDFI Program, the Fund will consider whether the applicant will expand its operations into a new target market, offer more products or services, and/or increase the volume of its activities.

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For more information, or to register for an Information Session, please contact the Fund at (202) 622–8662 or visit the Fund's web site at www.treas.gov/cdfi.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, and 4717; 12 CFR part 1805.

Dated: October 25, 1999.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 99–28283 Filed 10–29–99; 8:45 am]

BILLING CODE 4810–70–P

federal register

Monday
November 1, 1999

Part XI

The President

Proclamation 7245—National Adoption Month, 1999

Notice of October 29, 1999—Continuation of Sudanese Emergency

Federal Register
Vol. 64, No. 210
Monday, November 1, 1999

Presidential Documents

Title 3—

The President

Proclamation 7245 of October 28, 1999

National Adoption Month, 1999

By the President of the United States of America

A Proclamation

This month, as families across America look forward to the holiday season that is fast approaching, we remember with special concern the thousands of children in our Nation who are growing up without the unconditional love and security of a permanent home. Our Nation's foster care system plays an invaluable role in providing temporary safe and caring homes to children who need them, but permanent homes and families are vital to giving these children the stability and sustained love they need to reach their full potential.

My Administration has worked hard to promote adoption by assisting adoptive families and breaking down barriers to adoption. We have helped remove many economic barriers to adoption by providing tax credits to families adopting children, and the Family and Medical Leave Act that I signed into law in 1993 gives workers job-protected leave to care for their newly adopted children. The Adoption and Safe Families Act I signed in 1997 reformed our Nation's child welfare system, made clear that the health and safety of children must be the paramount concern of State child welfare services, and expedited permanent placement for children. It also ensured health coverage for children with special needs and created new financial incentives for States to increase adoption. We also took important steps to help ensure that the adoption process remains free from discrimination and delays on the basis of race, culture, and ethnicity. We are now working to break down geographic barriers to adoption by using the Internet to link children in foster care to possible adoptive families.

We have new evidence that our efforts are bearing fruit: the first significant increase in adoptions since the National Foster Care Program was created almost 20 years ago. A new report from the Department of Health and Human Services shows that from 1996 to 1998, the number of adoptions nationwide rose 29 percent—from 28,000 to 36,000—and should meet our national goal of 56,000 adoptions by the year 2002. In addition, the First Lady and I were pleased to announce this past September the first-ever bonus awards to States that have increased the number of adoptions from the public foster care system. We also announced additional grants to public and private organizations that remove barriers to adoption.

To follow through on this record of achievement, I have urged the Congress to safeguard the interests and well-being of young people who reach the age of 18 without being adopted or placed in a permanent home. Under the current system, Federal financial assistance for young people in foster care ends just as they are making the critical transition to independence. We must ensure that when these young people are old enough to leave the foster care system, they have the health care, life skills training, and educational opportunities they need to succeed personally and professionally.

As we observe National Adoption Month this year, we can take pride in our progress, but we know there is more work to be done. Let us take this opportunity to rededicate ourselves to meeting those challenges, and let us honor the many adoptive parents whose generosity and love have

made such an extraordinary difference in the lives of thousands of our Nation's children.

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 November 1999 as National Adoption Month. I urge all Americans to observe this month with appropriate programs and activities to honor adoptive families and to participate in efforts to find permanent, loving homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

[FR Doc. 99–28716
Filed 10–29–99; 11:31 am]
Billing code 3195–01–P

Presidential Documents

Notice of October 29, 1999

Continuation of Sudanese Emergency

On November 3, 1997, by Executive Order 13067, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Sudan. By Executive Order 13067, I imposed trade sanctions on Sudan and blocked Sudanese government assets. Because the Government of Sudan has continued its activities hostile to United States interests, the national emergency declared on November 3, 1997, and the measures adopted on that date to deal with that emergency must continue in effect beyond November 3, 1999. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency for 1 year with respect to Sudan.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
October 29, 1999.

[FR Doc. 99–28717
Filed 10–29–99; 11:31 am]
Billing code 3195–01–P

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Federal Register

Vol. 64, No. 210

Monday, November 1, 1999

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58755–59106..... 1

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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AGRICULTURE DEPARTMENT
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Connecticut, Massachusetts, and Rhode Island; nitrogen oxides budget trading program; significant contribution and rulemaking findings; published 9-15-99
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Spread spectrum communication technologies; published 9-23-99
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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1663/P.L. 106–83
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[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.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 1999

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
November 1	November 16	December 1	December 16	January 3	January 31
November 2	November 17	December 2	December 17	January 3	January 31
November 3	November 18	December 3	December 20	January 3	February 1
November 4	November 19	December 6	December 20	January 3	February 2
November 5	November 22	December 6	December 20	January 4	February 3
November 8	November 23	December 8	December 23	January 7	February 7
November 9	November 24	December 9	December 27	January 10	February 7
November 10	November 26	December 10	December 27	January 10	February 8
November 12	November 29	December 13	December 27	January 11	February 10
November 15	November 30	December 15	December 30	January 14	February 14
November 16	December 1	December 16	January 3	January 18	February 14
November 17	December 2	December 17	January 3	January 18	February 15
November 18	December 3	December 20	January 3	January 18	February 16
November 19	December 6	December 20	January 3	January 18	February 17
November 22	December 7	December 22	January 6	January 21	February 22
November 23	December 8	December 23	January 7	January 24	February 22
November 24	December 9	December 27	January 10	January 24	February 22
November 26	December 13	December 27	January 10	January 25	February 24
November 29	December 14	December 29	January 13	January 28	February 28
November 30	December 15	December 30	January 14	January 31	February 28

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